

EXHIBIT A



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Transcript of Jose Melendez

Date: August 13, 2019
Case: Sierra -v- Guevara, et al.

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1 VOLUME I Pages 1 - 241

2 UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

4 EASTERN DIVISION

5

7 THOMAS SIERRA,

Plaintiff,

Case No.:

9 | VS.

18-C-3029

10 REYNALDO GUEVARA, et al.,

Defendants.

12 | - - - - - - - - - - - - - - - x

13

DEPOSITION OF JOSE MELENDEZ

15

13 AUGUST 2019

17

7:30 a.m.

18

FEDERAL PRISON CAMP YANKTON

20

1016 Douglas Avenue

21

Yankton, South Dakota

22

23

24 Jane M. Borrowman, RPR

Transcript of Jose Melendez
Conducted on August 13, 2019

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-- appearances continued --

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1

I N D E X

2

WITNESS: JOSE MELENDEZ

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1 P R O C E E D I N G S

2 (Witness sworn.)

3 MR. ART: So let the record reflect
4 that this deposition is taken pursuant to
5 notice under the Federal Rules of Civil
6 Procedure.

7 JOSE MELENDEZ,

8 a witness called for examination by counsel
9 for the Plaintiff, being first duly sworn, was
10 examined and testified as follows:

11 EXAMINATION

12 BY MR. ART:

13 Q. Mr. Melendez, my name is Steve Art and I
14 represent the plaintiff in this case. Thank
15 you so much for joining us this morning.

16 Can you start by just stating and
17 spelling your name for the record, please.

18 A. Jose Melendez.

19 Q. Can you spell it for us?

20 A. J-O-S-E. M-E-L-E-N-D-E-Z.

21 Q. So I'm going to be asking you some questions
22 today about the murder of your friend, Noel
23 Andujar, and the investigation that followed.

24 Okay?

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1 A. Yeah.

2 Q. And I'm sorry to bring up what I know is a
3 painful memory. Okay.

4 So, sir, did you live in Chicago in
5 1995?

6 A. Yeah.

7 Q. At that point in time, how long had you lived
8 there?

9 A. I lived there all my life.

10 Q. All your life?

11 A. Yeah.

12 Q. I want to direct your attention to May 23rd,
13 1995, okay, the day that Nuni Andujar was
14 killed. Okay?

15 A. Yeah.

16 Q. That evening, did you pick up Nuni from his
17 house?

18 A. Yeah. I picked him up at the Diversey
19 Projects.

20 Q. Whose car were you driving that evening?

21 A. Mine.

22 Q. Was anyone else in the car with you and Nuni?

23 A. Yeah, my other friend, Alberto.

24 Q. Okay.

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3 Q. Let me just, so we have a good record, just
4 ask you again. Was anyone else in the car
5 with you that evening?

6 A. Yeah, Alberto.

7 Q. At some point that evening, did you get to the
8 stop sign and the stoplight just east of the
9 monument at Logan Square?

10 A. Yeah. I came to a stop sign right -- right
11 before turning at the monument.

12 Q. Okay. Did you encounter a vehicle there that
13 fired shots at the car you were driving?

14 MS. BARBER: I'm going to object to
15 the leading question.

16 MR. LEINENWEBER: Join.

17 MR. KIVETZ: Join.

18 THE WITNESS: Yeah. There was a car
19 there.

20 (Whereupon, Melendez Exhibit No. 1
21 was marked for identification.)

22 | BY MR. ART:

23 Q. Okay. I'm going to show you what's been
24 marked as Exhibit 1. That's an overhead map

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1 that you're looking at and I'll represent to
2 you that it's a map of Logan Square. Okay?

3 Does that appear to be a map of the
4 scene where the shooting occurred?

5 A. If this is the -- the eagle right there, yeah.

6 Q. Okay. And you're pointing to the center of a
7 green area on the left of the map, correct?

8 A. Yeah.

9 Q. Do you recognize that to be the monument in
10 the middle of Logan Square?

11 A. Yeah, the monument.

12 Q. And what is the street going east from that
13 monument on that map, in the middle, the long
14 street?

15 A. Well, you got Wrightwood right here, a street,
16 this street right here, going toward east and
17 west. (Gesturing.)

18 Q. Okay. So I'll represent to you that the top
19 of this map is north. Okay?

20 So that would be Wrightwood going
21 off the monument to the west, here
22 (gesturing), and Kedzie going north-south. Is
23 that correct?

24 A. Wrightwood goes west.

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1 Q. Right. So if this is west, is that
2 Wrightwood? (Gesturing.)

3 A. Yeah.

4 Q. Okay. And then what street is going
5 north-south on that map?

6 A. Kedzie.

7 MS. BARBER: Objection. Form.

8 THE WITNESS: Kedzie.

9 BY MR. ART:

10 Q. And then what street goes off to the east of
11 the monument, that way? (Gesturing.)

12 MS. BARBER: Objection. Form.

13 BY MR. ART:

14 Q. Right here, in the middle.

15 A. Logan Boulevard.

16 Q. Okay. As you were driving on Logan Square,
17 which way were you driving towards the
18 monument?

19 A. I was coming from the east towards west.

20 Q. Okay. So were you driving westbound?

21 A. Yeah. Well, I had to come through a --
22 through that one street that goes around the
23 monument, which I was going to take it to go
24 back down Kedzie.

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1 Q. Okay. So you were going westbound on Logan,
2 towards the monument?

3 A. Yeah.

4 Q. And is that where you encountered this car?

5 A. Yeah, at the stop sign.

6 Q. Okay. Do you see on this map where that stop
7 sign was?

8 A. Well, I can't. I can't see that.

9 Q. Okay. Let's talk about --

10 A. I mean, it's been a while since I seen this.

11 Q. Okay.

12 A. I know the stop sign is right before the
13 monument.

14 Q. It's a stop sign as you would drive in towards
15 the monument?

16 A. Yeah.

17 Q. Correct?

18 A. Yes.

19 Q. Okay. Let's talk about where everyone was
20 sitting in the car that you were driving.

21 Okay?

22 Who was driving the car?

23 A. I was.

24 Q. Were you driving that entire evening?

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1 A. Yeah.

2 Q. Who was in the passenger seat?

3 A. Alberto.

4 Q. And then where was Nuni Andujar sitting?

5 A. Yeah, I believe he was behind me.

6 Q. Okay. Where did you first become aware of
7 this other car when you were driving?

8 A. As soon as I got to that stop sign.

9 Q. Okay. What side of your car was this other
10 car on?

11 A. Well, he was, basically, on -- I want to say
12 on my left side.

13 Q. Okay. Did that car stay on your left side the
14 entire time?

15 A. Well, it kind of -- it kind of had -- at the
16 stop sign, it kind of slowed down.

17 Q. Okay.

18 A. So at that -- at that moment, I told them, you
19 know, just keep an eye on the car because he
20 had slowed down too slow, you know. And
21 after --

22 Q. So not to interrupt you, but let me just take
23 it piece by piece.

24 So, at first, was the car ahead of

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1 you?

2 A. Yeah, kind of ahead of me.

3 Q. Okay. Did you then catch up to it?

4 A. Nah. It kind of pulled off as I was coming to
5 the stop sign, but it's like -- it like
6 stalled, you know, like it was just waiting
7 for me to pass the stop sign.

8 Q. Okay. So the car was waiting for you to catch
9 up, is that a fair summary?

10 A. Yeah.

11 Q. All right. And --

12 MR. KIVETZ: Just objection, form.
13 You keep confirming the witness,
14 "okay, all right." If you could please try to
15 refrain from doing that.

16 MR. ART: What's the objection,
17 counsel?

18 MR. KIVETZ: That you're confirming
19 the witness's statement by saying "okay" and
20 "all right."

21 MR. ART: And what's the basis of
22 the objection?

23 MR. KIVETZ: That it's, basically,
24 coaching or confirming what he said. So I'm

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1 trying to ask you to stop doing it.

2 MR. ART: Okay. I don't think that
3 that's a valid basis for an objection.

4 MR. KIVETZ: I do think it is a
5 valid basis. I think it's -- you're,
6 basically, by saying "okay" or "all right,"
7 you're confirming his answer is truthful.

8 MR. ART: Do you dispute that these
9 answers are truthful, counsel?

10 MR. KIVETZ: That's not for me to
11 say or deny, Mr. Art, but all I'm saying is
12 you are confirming the witness, not me.

13 MR. ART: Okay.

14 MR. KIVETZ: And I think it's
15 inappropriate.

16 MR. ART: Okay.

17 BY MR. ART:

18 Q. As you approached the car, what side of your
19 car was it on?

20 A. It was on the left-hand side, like in front,
21 on the left-hand side.

22 Q. So the car that I'm going to calling the
23 "shooter car," okay, was on your side of the
24 car as the driver, correct?

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1 A. Yeah.

2 Q. It was not on Alberto's side of the car as the
3 passenger, correct?

4 A. No. It was on my side, like on the left hand,
5 in front of me.

6 Q. Okay. Let's talk briefly about what that car
7 looked like. All right?

Do you remember what color it was?

9 A. Black.

10 Q. Did it have tinted windows?

11 A. Yes, it had tinted windows. And it also had
12 rims, like custom rims on it.

13 Q. Okay. Was it dark tint on all the windows?

14 A. It was dark.

15 Q. Is there any doubt in your mind, as you sit
16 here today, that that car had dark tinted
17 windows?

18 MR. KIVETZ: Objection. Form.

19 THE WITNESS: Doubt? No. It had
20 tinted windows.

21 BY MR. ART:

22 Q. During this incident, were the windows of that
23 car rolled up or down?

24 A. They were up.

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1 Q. Do you remember, as you sit here, whether it
2 was daytime or nighttime?

3 A. I believe it was light. It was -- it was
4 light outside.

5 Q. Let me ask you this, if the documents in the
6 case said that the incident happened around
7 10:30 at night, does that refresh your
8 recollection at all?

9 A. Nah, it wasn't -- it wasn't dark out then. It
10 wasn't that dark. It wasn't even 10:30 at
11 night. I believe it wasn't.

12 Q. Okay. I'll show you some police reports in a
13 few minutes just to kind of set up a timeline.
14 Okay?

15 A. All right.

16 Q. In fact, let me show you -- we'll get to that.
17 At some point before the shooting
18 happened, did the passenger in the other car
19 flash gang signs at you?

20 MS. BARBER: Objection. Leading.

21 THE WITNESS: When I -- when I was
22 -- like when I was catching up to the car, I
23 could see like -- towards the passenger door,
24 I seen like a -- like a Cobra sign on the

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1 window.

2 BY MR. ART:

3 Q. So describe for us what you saw as you
4 approached the car.

5 A. When I -- when I was approaching the -- when I
6 was going -- trying to go around the car to go
7 up Kedzie, that's when he threw up the
8 gangster sign. I believe it was the Cobra
9 sign he threw at me. (Gesturing.)

10 Q. Okay. And describe the shape that you're
11 making with your hand, sir.

12 A. Like -- like this. (Gesturing.) Like a --

13 Q. Like a "C"?

14 A. -- "C," yeah, type of...

15 Q. All right. Did he put his hand against the
16 inside of the window?

17 A. Yeah, on the window, you know. (Gesturing.)

18 Q. Okay. At any point, did you see any other
19 gang signs that this person was --

20 A. Nah, I ain't see no other gang signs.

21 Q. At any point, did you see him throwing down
22 any kind of gang sign?

23 A. I just -- it was like a Cobra sign put against
24 the window.

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1 Q. Okay. And when you say he "threw the Cobra
2 sign," what street gang are you referring to?

3 A. Well, it's Spanish Cobras.

4 Q. Okay. At some point, did you see the
5 passenger door of that car open up?

6 MS. BARBER: Objection. Leading.

7 THE WITNESS: Well, yeah, it opened
8 up because it -- it was -- it was -- you know,
9 the windows are tinted, but you could see the
10 figures inside. You know what I'm saying? So
11 he was, basically, saying something to the --
12 to the driver.

13 And I don't know what they did, but
14 when he opened the door, when he went to open
15 the door, I threw my car at it, so he closed
16 it again.

17 So when I tried to go towards
18 Wrightwood, the door threw open again, and
19 that's when they started shooting. All you
20 heard was shooting coming at you.

21 BY MR. ART:

22 Q. Okay. Did the door open before or after you
23 saw him put that "C" on the window?

24 A. After.

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1 Q. All right. How long after he put the "C" on
2 the window did the door open?

3 A. I want to say it was a second. It was less
4 than -- you know, it was -- it was -- it was
5 kind of quick because everything was kind of
6 quick. You know what I'm saying?

7 As soon as I tried to go around,
8 then he opened a door and, right there, I like
9 "something was gonna to happen." So I threw
10 the car at his door, he shut it, and then he
11 -- when I -- when I went to spin off towards
12 Wrightwood, he opened it, put his leg on the
13 -- on the door, and that's when he just
14 started shooting at us.

15 Q. Okay. So, let's break that down just
16 step-by-step.

17 A. Okay.

18 Q. So you see the gang sign first, correct?

19 A. Yeah.

20 Q. What's the next thing that happened after
21 that?

22 A. Well, he said something -- the driver and him
23 were saying something to each other. And as I
24 was coming to go around the car to go to

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1 Kedzie, because we were going around the
2 eagle, the door flew open and I threw my car
3 at him.

4 Q. Okay. Let me stop you at the door opening.

5 When the door opened, did you see
6 anyone inside?

7 A. Uh-uh. I mean, I wasn't looking. I'm not
8 looking at nobody at that point because I
9 already know something's gonna happen. So
10 what I try to do is I try to get him to close
11 that door back so, that way, I could just
12 shoot towards my right because I already know
13 something finna go down.

14 Q. And when you say "shoot," you mean drive,
15 correct? When you just said "shoot to your
16 right," you mean drive to your right?

17 A. Yeah. When I shot to my right, I was trying
18 to avoid, you know, whatever was coming, you
19 know.

20 Q. Okay. You said you threw your car at the
21 door.

22 A. Yeah.

23 Q. What do you mean by that?

24 A. I threw it at the door because I was going to

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1 hit the -- the side of the door. You know,
2 like I was -- I was, basically, going to hit
3 the car just to get that door closed.

4 Q. Okay.

5 A. You know what I'm saying? Like, I was trying
6 -- I was trying to get him to close the door
7 so I have enough time to shoot to my right,
8 you know.

9 Q. So, did you swerve towards the car?

10 A. Yeah. You could say I swerved at the car.

11 Q. Got it.

12 And was the car still on your left?

13 A. Yeah.

14 Q. What happened when you swerved towards the
15 car?

16 A. Well, he shut the door. And when I swerved
17 toward my right, that's when the door flew
18 back open and he had his leg on it.

19 Q. Okay. And so -- so you swerved towards him
20 and the door shut, is that correct?

21 A. Yeah.

22 Q. And then, at that point, were you turning off
23 of the monument?

24 A. Yeah. Well, when I -- when I swerved at him,

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1 he shut the door, I shot to my right. I was
2 swerving away from the monument, going towards
3 Wrightwood.

4 Q. Okay. And so when you shot to your right,
5 what street were you turning on?

6 A. Wrightwood.

7 Q. And which way was the shooter car going?

8 A. Well, it was -- it was going -- it kind of
9 like was going around the eagle, like going
10 towards Kedzie, but it slowed down right there
11 like. (Gesturing.)

12 Q. Was it going around the eagle towards Kedzie
13 southbound?

14 A. Yeah.

15 Q. All right. After the door closed and you made
16 a right towards Wrightwood, did you
17 accelerate?

18 A. Well, I -- yeah. Well, I was -- I kind of
19 like -- I had to swerve back this way
20 (gesturing) to go up Wrightwood because I was
21 just -- you know, I was going towards Kedzie,
22 too, but there's a little -- a little space
23 right there where you could kind of like shoot
24 this way (gesturing), you know, so I took that

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1 and shot to the right. (Gesturing.)

2 Q. Okay. And so when you said you "had to go up
3 this way," you mean you had to go out to your
4 right?

5 A. Yeah, went to my right.

6 Q. And let the record reflect that you're making
7 hand gestures showing that you're going to the
8 right, but we --

9 A. Yeah, to the right, toward the right.

10 Q. -- gotta get it for the court reporter. Okay?

11 Did you say anything to Alberto and
12 to Nuni in your car, that you remember?

13 Take your time. And I understand
14 that it's a painful memory, so just take your
15 time. Okay?

16 A. When -- when I seen -- when I seen all that
17 stuff, I told them just to like duck, because
18 I mean like they were going to shoot at us, so
19 I told them just to duck and let me drive, and
20 that's all I told them.

21 Q. So do you remember at what point you told the
22 other guys in your car to duck?

23 A. Yeah. Well, basically, when I was -- when I
24 -- when I -- when I was going towards --

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1 around the monument, I said these people finna
2 -- they finna shoot at us, so I told them they
3 start shooting, just duck, you know, and let
4 me drive, you know. So, that way, you know,
5 they wouldn't get hit or whatever. You know
6 what I'm saying? I just told them to duck so,
7 that way, they'd be all right, you know.

8 Q. Did you say that before the guy in the shooter
9 car opened the door that first time?

10 A. Well, basically, yeah, I did tell them, hey,
11 something finna go down, so just -- if
12 anything happens, just duck.

13 Q. Did those guys duck down?

14 A. Well, I seen Alberto was ducked down. I don't
15 know -- because I couldn't -- I wasn't, you
16 know, looking at Nuni to see if he ducked.

17 Q. Right.

18 A. I was just trying to drive and get away. You
19 know what I'm saying?

20 Q. Okay.

21 A. Trying to avoid it, you know.

22 Q. But you saw Alberto duck down next to you?

23 A. Yeah.

24 Q. All right. Importantly, sir, at any time that

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1 you were next to this car, did you see the
2 shooter's face?

3 A. Nah. I wasn't trying to -- I ain't trying to
4 look at no one. I'm trying to get away, man.

5 Q. Did you ever get a look at that shooter that
6 would have let you make an identification of
7 him later?

8 A. No.

9 MR. KIVETZ: Objection. Form.

10 BY MR. ART:

11 Q. But, to be clear, you did get a look at the
12 car that they were driving --

13 A. Yeah.

14 Q. -- correct?

15 After escaping the scene, do you
16 remember running into some police officers?

17 A. Yeah. I was trying to take him to the
18 hospital.

19 Q. Do you remember where you ran into those
20 officers?

21 A. I believe it was like at the -- going down
22 Kedzie, after Fullerton somewhere, he stopped
23 me before I got to -- I want to say between
24 Palmer and Fullerton, somewhere in that area.

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1 Q. Okay. Let me show you what we're marking as
2 Exhibit 3.

3 (Whereupon, Melendez Exhibit Nos. 2
4 and 3 were marked for
5 identification.)

6 Q. Let me show you what we're marking as Exhibit
7 3, sir. Do you recognize the car in that
8 photo?

9 A. That's my car.

10 Q. Was that the car you were driving that night?

11 A. Yeah.

12 Q. Do you recognize it to be in the location
13 where you ran into those police officers?

14 A. That's Fullerton right there, where they
15 parked, yeah. Like, I was -- I was already at
16 -- past Fullerton --

17 Q. Okay.

18 A. -- when they stopped me.

19 Q. Let's talk about the description that you were
20 able to provide at the scene. Okay?

21 I'm going to show you a two page
22 police report marked as Exhibit No. 2. Okay.
23 And I'll represent to you that this is a
24 police report created by the officers that you

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1 ran into at the scene. Okay?

2 So and, actually, we're just going
3 to focus on this first page here. Okay. And
4 to keep things moving, I will just walk you
5 through it.

6 All right. So, up here, at the top,
7 on the right-hand side, it says that on the
8 23rd of May 1995, this incident occurred at
9 22:30, or at 10 p.m.

10 Do you see that?

11 A. Yeah.

12 MS. BARBER: Objection. Form.

13 BY MR. ART:

14 Q. Do you remember the incident occurring around
15 10:30 p.m. at night?

16 A. It wasn't that dark out there, like that.
17 Like it looks right there, it wasn't that
18 dark.

19 Q. Okay. This states that the police officers
20 arrived five minutes later, at 10:35.

21 Do you see that, right underneath?

22 A. Yeah.

23 Q. Okay. Do you remember the police -- running
24 into those police officers pretty soon after

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1 you escaped the shooting?

2 A. I believe that when I was going -- I don't
3 know if they were coming from Fullerton, but
4 they did stop me. It was -- it was -- it was
5 kind of quick, though, you know, but --

6 Q. And when you say "it was kind of quick," tell
7 us what you mean.

8 A. I mean, like when I was going down Kedzie, it
9 was like they were on Fullerton and they
10 already seen my car coming, you know, so they
11 came and stopped me. When they stopped me, I
12 told them I was trying to get my friend to the
13 hospital.

14 Q. Is it fair to say that it was just right after
15 the shooting happened?

16 A. Yeah, it is. It's fair to say, yeah.

17 Q. Okay. On the left-hand side here, your name
18 is listed as a witness.

19 Do you see that?

20 A. Yeah.

21 Q. And under your name is Alberto's.

22 Do you see that?

23 A. Yeah.

24 Q. Okay. And then, below, it lists the

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1 offender's names. Okay? And descriptions.

2 Okay?

3 MS. BARBER: Objection. Form.

4 BY MR. ART:

5 Q. Do you see --

6 MR. KIVETZ: Join.

7 And then, also, for the record, can
8 we just have a -- if one of us --

9 MR. ART: Absolutely.

10 MR. KIVETZ: -- says "objection" --

11 MR. ART: Yeah.

12 MR. KIVETZ: -- we all do?

13 MR. ART: But just let me --

14 MR. KIVETZ: And, also, one other --
15 one other thing --

16 MR. ART: Yeah, but -- but, please,
17 hold on a second. I hadn't even asked a
18 question and you guys started talking.

19 MS. BARBER: It ended with "do you
20 see that there," and then I objected, so I
21 thought that was your question.

22 MR. ART: I didn't say "did you see
23 that there," but go ahead.

24 MR. KIVETZ: Back on my confirming

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1 objection, you're both nodding your heads when
2 he answers, on several occasions.

3 MR. ART: Okay. That --

4 MR. KIVETZ: If you also could,
5 please, stop. Refrain from --

6 MR. ART: So, you know, I have to
7 say for the record that is a ridiculous
8 objection.

9 MR. KIVETZ: Oh.

10 MR. ART: Okay?

11 MR. KIVETZ: I disagree.

12 MR. ART: The idea that we're
13 coaching this witness is absolutely
14 preposterous.

15 MR. KIVETZ: So confirming by
16 nodding your head, when he gives an answer,
17 and saying "okay" and "all right" the whole
18 time --

19 MR. ART: I mean, are you saying
20 that this witness is not telling the truth --

21 MR. KIVETZ: I'm not saying --

22 MR. ART: -- and he needs to be
23 coached about what happened?

24 MR. KIVETZ: Are you now trying to

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1 -- you know, maybe we should have him step out
2 of the room.

3 MR. ART: No.

4 MR. KIVETZ: All right. Then --

5 MR. ART: The objection is
6 absolutely without basis and the idea that
7 you're suggesting that attorneys in this
8 deposition are coaching this witness is
9 ridiculous.

10 MR. KIVETZ: I'm saying that you're
11 confirming his answers by nodding your heads
12 together, the both of you, at the same time,
13 whenever he gives the response.

14 MR. SWAMINATHAN: You're saying
15 every time he gives a response, we're both --

16 MR. KIVETZ: I -- I'm just saying --

17 MR. SWAMINATHAN: -- trying to
18 coach, are you saying that for the record?

19 MR. KIVETZ: I'm not. I'm not --

20 MR. ART: You're an officer of the
21 court. Are you representing for the record --

22 MR. KIVETZ: Steve, stop it.

23 MR. ART: No.

24 MR. KIVETZ: Stop it.

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1 MR. ART: No.

2 MR. KIVETZ: What I'm saying is,
3 throughout several answers --

4 MR. ART: This is ridiculous.

5 MR. KIVETZ: -- throughout several
6 answers, you are -- you guys are nodding your
7 heads, and then -- and I think it's
8 inappropriate, and I will ask you to stop
9 doing it.

10 MR. ART: Okay.

11 MR. KIVETZ: That's it.

12 MR. ART: I'm going to ask other
13 counsel if they agree with counsel that we are
14 nodding our heads in response to every answer,
15 because as --

16 MR. KIVETZ: I didn't say --

17 MR. ART: -- an officer of the court
18 --

19 MR. KIVETZ: -- every answer.

20 MR. ART: Yes, you just did say
21 that.

22 MR. KIVETZ: I did not.

23 MR. ART: And it is inappropriate,
24 as an officer of the court, to misrepresent

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1 what is happening in this room.

2 MR. KIVETZ: I'm not
3 misrepresenting. I think what you guys are
4 doing is misrepresenting, but let's just --

5 MR. ART: Okay. I would ask other
6 counsel if we have been nodding in response to
7 every question.

8 MR. KIVETZ: Well, it's not every
9 question. That's unfair. Maybe, then -- you
10 can ask them that.

11 MR. ART: I just did ask.

12 MR. LEINENWEBER: To be fair, I have
13 not watched it all.

14 MS. BARBER: I'm not -- I'm not
15 paying attention.

16 MR. ART: Okay. So neither of you
17 have paid attention?

18 MS. BARBER: Just relax. Just let
19 him make his objection and then move on.

20 MR. ART: No, but he can make an
21 objection, he can't misrepresent what's going
22 on.

23 MR. KIVETZ: I'm not
24 misrepresenting. Are you saying that you

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1 haven't been nodding your heads to occasional
2 answers, just recently, in the past five or
3 six --

4 MR. ART: No.

5 MR. KIVETZ: -- questions?

6 MR. ART: I'm not.

7 MR. KIVETZ: Okay. Okay.

8 MR. ART: What I'm saying is that
9 you just represented for the record that we're
10 nodding our head as a way of coaching the
11 witness.

12 MR. KIVETZ: I have.

13 MR. ART: Which is incorrect.

14 MR. KIVETZ: Okay. Well, I'd
15 appreciate it if you'd stop nodding your
16 heads.

17 MR. ART: Okay.

18 BY MR. ART:

19 Q. Sorry, sir. Let me take you back to the
20 report that we've marked as Exhibit 2. Okay?

21 Under your name, do you see where
22 there's a field for offender's name and
23 description?

24 A. Yeah.

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1 Q. Okay. Do you see any description in that
2 field of the police report?

3 A. No.

4 MS. BARBER: Objection. Foundation.

5 BY MR. ART:

6 Q. Can you -- can you read this police report,
7 sir?

8 A. I can't read this writing, but...

9 Q. Okay. Do you see any description in these two
10 fields in the middle?

11 A. No.

12 MS. BARBER: Objection. Foundation.

13 MR. ART: Do you remember --

14 MS. BARBER: And form.

15 BY MR. ART:

16 Q. Do you remember that you were unable to
17 describe the perpetrators at the scene?

18 MR. KIVETZ: Objection. Form.

19 Leading. Foundation.

20 THE WITNESS: Like I said, I wasn't
21 looking at them when they were shooting at me,
22 so I can't identify nobody.

23 BY MR. ART:

24 Q. Okay. Further down here, on the right-hand

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1 side of page 1 of this police report, it
2 identifies the offender as Spanish Cobras.

3 Do you see that?

4 A. Yeah.

5 Q. Did you tell the police that the perpetrators
6 were Spanish Cobras?

7 MS. BARBER: Objection.

8 THE WITNESS: I told them --

9 MS. BARBER: Form.

10 THE WITNESS: -- they threw up the
11 gang sign of Spanish Cobras.

12 BY MR. ART:

13 Q. Okay. Below that, there is a description of
14 the automobile, right here. Do you see that?
15 It says "blue." It says "Buick."

16 Do you see that there?

17 A. Yeah.

18 Q. Do you remember telling the police that the
19 car was a Buick?

20 A. I told them it was a black -- it was a black
21 Buick.

22 Q. Do you remember telling them it had custom
23 wheels?

24 A. Yeah. And tints.

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1 COURT REPORTER: I'm sorry. And?

2 THE WITNESS: Tinted windows.

3 COURT REPORTER: Thank you.

4 Q. And so you told the police at the scene that
5 the car had tinted windows, correct?

6 A. Yes.

7 Q. You were trying to help your friend, Nuni, at
8 that point, right?

9 A. Yeah. I was trying to take him to the
10 hospital.

11 Q. Okay. Were you giving all the -- the police
12 at the scene all the information that they
13 were asking for?

14 A. I believe I did. I mean, I'm not -- I'm not
15 -- I wasn't sitting there worried about none
16 of that stuff right there at the moment
17 because I was trying to get my friend to the
18 hospital.

19 Q. Do you have any reason to withhold information
20 from the police?

21 A. With what?

22 Q. Right.

23 So did you have any reason to do
24 that, or no?

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1 A. No.

2 Q. Later that night, do you remember being
3 brought to the police station at Grand and
4 Central?

5 A. I mean, it --

6 MR. KIVETZ: Objection. Form.

7 THE WITNESS: It happened 20 some
8 years ago. I can't remember everything, you
9 know, but I -- I can't -- I remember going to
10 the station at some point. You know what I'm
11 saying? But I don't know -- you know what I'm
12 saying? Like, I can't -- you know, it's been
13 20 some years ago, man.

14 BY MR. ART:

15 Q. Yeah. I understand.

16 Do you remember looking through some
17 mugshot photo books --

18 MS. BARBER: Objection. Leading.

19 BY MR. ART:

20 Q. -- after this?

21 A. Yeah. I seen some -- some photos that they
22 were showing me.

23 Q. Okay. Do you remember how many times you went
24 to Grand and Central relating to the

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1 investigation of Nuni's death?

2 MR. KIVETZ: Objection. Form.

3 THE WITNESS: I went -- as far as I
4 remember, I remember just one time when he --
5 he took me to look at some photos.

6 BY MR. ART:

7 Q. Okay. So as you sit here today, do you
8 remember whether that one time was the night
9 of the shooting or later?

10 A. Nah, it wasn't in the same night as the
11 sheeting.

12 Q. Okay. So the time that you remember, as you
13 sit here today, was later than the shooting,
14 is that correct?

15 A. Right, it was after the shooting.

16 Q. All right. When you -- when you went back
17 after the shooting to -- or strike that,
18 please.

19 When you went to area -- strike
20 that, please.

21 When you went to Grand and Central
22 after the shooting, do you remember whether
23 Alberto was with you?

24 A. Yeah, I believe he was there, too.

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1 Q. Okay. At any time between the night that Nuni
2 was killed and when you later went into Grand
3 and Central, did the police ever come to your
4 house asking questions about this case?

5 A. Nah. Nope.

6 Q. In that period of time, from when Nuni was
7 shot to when you went to Grand and Central,
8 did you go anywhere or were you in the
9 neighborhood?

10 MS. BARBER: Objection. Form.

11 THE WITNESS: Can you ask your
12 question again?

13 BY MR. ART:

14 Q. At any point in time between when the shooting
15 happened and when you went into Grand and
16 Central later on, did you leave the city of
17 Chicago?

18 A. No.

19 Q. Were you in the neighborhood at that time?

20 A. Yeah. I was in the neighborhood the whole
21 time.

22 Q. Could the police have found you if they needed
23 to find you?

24 A. Yes.

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1 MR. KIVETZ: Objection. Form.

2 BY MR. ART:

3 Q. At that time, did you know the police officer
4 named Reynaldo Guevara?

5 A. Yeah.

6 Q. How did you know of him?

7 A. I mean, he worked in Area 5, detective, he was
8 a detective over there.

9 Q. Did you know what he looked like?

10 A. Yeah.

11 Q. What did he look like?

12 A. He had curly hair.

13 Q. Describe to the -- sorry.

14 A. I wanna say he was kind of like -- like
15 skinny, curly hair. He had a little like
16 mustache. I don't know. I mean, I ain't seen
17 him in a while, you know, so like I -- you
18 know, but I -- I know he had curly hair.

19 Q. Okay. Do you remember whether he wore
20 glasses?

21 A. That, I can't -- that, I don't -- I can't
22 really tell you, I mean.

23 Q. Let me --

24 A. I don't know if he did or not, if he was

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1 wearing them or what, I just don't remember.

2 Q. So you don't remember one way or the other?

3 A. Yeah.

4 Q. Okay.

5 A. I can't.

6 Q. What was Guevara's reputation at that time?

7 MS. BARBER: Objection. Foundation.

8 THE WITNESS: Reputation? What you
9 mean as far as reputation?

10 BY MR. ART:

11 Q. Did he have a reputation in the neighborhood?

12 A. Who didn't over there? Like, you know, he
13 just -- he was a -- just dirty, man, just a
14 dirty dude, man, period.

15 Q. Okay. I don't have a lot left, but I want to
16 get through a few key issues with you. Okay?

17 A. Yeah.

18 Q. Did you see Guevara at Grand and Central when
19 you went back there in relation to the Andujar
20 investigation?

21 A. Yeah. He the one that showed me the pictures.

22 Q. Okay. When you said he showed you pictures,
23 did he show you a photo array?

24 A. Yeah. Well, he had -- he had some pictures on

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the table and he also had one in his hand.

2 Q. Okay. This time that Guevara showed you
3 photos by putting some on the table and
4 holding one in his hand, was that the first
5 time that Guevara had shown you photos in
6 connection with this investigation?

7 A. Yeah.

8 MR. KIVETZ: Objection. Form.

9 BY MR. ART:

10 Q. Do you remember how many photos he laid out on
11 the table?

12 A. I don't know. There was like -- it could have
13 been anywhere from five or six. I'm not sure,
14 you know, I wasn't counting.

15 Q. Right. How many photographs was he holding in
16 his hand?

17 A. One.

18 Q. Did he tell you anything about that photograph
19 that he held in his hand?

20 A. I mean, he told me that -- that he was the
21 shooter, you know, he like "this guy shot your
22 friend."

23 Q. When he told you that, did you tell him
24 whether you had seen that shooter?

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1 MR. KIVETZ: Objection. Form.

2 THE WITNESS: Nah, because I -- I
3 ain't never told him I seen that shooter.

4 BY MR. ART:

5 Q. Let me ask you the question a different way.
6 Did you tell him that you hadn't seen the
7 shooter?

8 A. Nah.

9 MR. KIVETZ: Objection. Form.

10 THE WITNESS: I ain't never seen the
11 shooter.

12 BY MR. ART:

13 Q. So you hadn't seen the shooter at the point
14 that you went into Grand and Central, correct?

15 A. No.

16 MR. KIVETZ: Objection. Form.

17 BY MR. ART:

18 Q. So when he showed you the photograph and told
19 you it was the shooter, did you tell him "I
20 don't know who the shooter is"?

21 MR. KIVETZ: Objection. Form.

22 THE WITNESS: Well, I mean, I ain't
23 tell him nothing. I didn't know who the
24 shooter was. He said "this is the guy," and

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1 that was it.

2 BY MR. ART:

3 Q. Okay.

4 A. You know.

5 Q. Okay. Did you tell him you hadn't seen the
6 shooter's face?

7 MR. KIVETZ: Objection. Asked and
8 answered.

9 THE WITNESS: I ain't never gave him
10 a description of the shooter. I just say he
11 was Hispanic. That's it.

12 BY MR. ART:

13 Q. Okay. But when you were interacting with
14 Guevara, did you tell Guevara "I can't tell
15 you who the shooter is because I didn't see
16 his face"?

17 MR. KIVETZ: Objection. Form.

18 Leading. Foundation. Asked and answered.

19 THE WITNESS: I couldn't tell him
20 who the shooter was because I ain't never seen
21 the shooter.

22 BY MR. ART:

23 Q. No. I get that -- I get that point, fully.
24 Let me -- I'm going to read to you testimony

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1 that you gave at the criminal trial of Thomas
2 Sierra in February 1997. Okay. And just
3 listen to this testimony that I'm going to
4 read for you and then I'm going to ask you
5 some questions. Okay?

6 This is, for the record, on page
7 E207 at line 6:

8 "Question: And after he showed you
9 the photo array, did you point out a picture
10 to that detective as to who shot Noel Andujar
11 and you?

12 "Answer: I told them that I didn't
13 see the person that shot.

14 "Question: Did you point out a
15 picture to the detective?

16 "Answer: I pointed a picture he
17 told me to pick out."

18 Sir, do you remember being asked
19 those questions and giving those answers?

20 A. Well, like I said --

21 MR. KIVETZ: Objection. Form and
22 foundation.

23 MR. ART: Go ahead.

24 MR. KIVETZ: And I think it's

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1 improper impeachment.

2 THE WITNESS: It's been a long time,
3 you know, for me to remember all that stuff,
4 you know. I can't remember all that, but I
5 could tell you that he told -- when he showed
6 me that picture, he said "this is the
7 shooter." You know what I'm saying?

8 BY MR. ART:

9 Q. Yeah.

10 A. And as far as -- you know, like as far as him
11 telling me the shooter, he's telling me "this
12 is the shooter," like "point this dude out."
13 You know what I'm saying? That's how I took
14 it.

15 And on top of that, you know, these
16 people are like -- you know, my buddy just got
17 shot, you know. I don't -- you know, some of
18 my buddies are like -- they're just the same
19 way, where they get people that, "hey, say
20 this the dude," you know. So to me, it was
21 like, yeah, let him -- let him sit there for a
22 little while just like my buddy did. You know
23 what I'm saying? That's how I -- you know,
24 that's how I -- that's how I take it, you

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1 know.

2 Q. When he was holding that picture and saying
3 "this is the shooter" --

4 A. Yeah.

5 Q. -- what did you do in response?

6 A. Well, I mean --

7 MR. KIVETZ: Objection. Asked and
8 answered.

9 THE WITNESS: I don't know what I
10 did that day, man. It's 20 some years ago,
11 man, you know.

12 BY MR. ART:

13 Q. Did you agree to go along with his story, do
14 you remember?

15 MR. KIVETZ: Objection. Form.
16 Foundation. It's even been asked and
17 answered.

18 BY MR. ART:

19 Q. Go ahead. Sorry.

20 A. I can't remember what I told him that day.

21 Q. Did you later learn who the man was in that
22 picture he was holding up?

23 A. Well, I mean, they -- I ended up going to a --
24 to his trial, whatever it was.

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1 Q. Right.

2 A. That's the -- that's -- that's at the time
3 that I seen that dude, you know, that's the
4 first time I seen him.

5 Q. Okay. So the person that you saw when you
6 testified at the criminal trial that we were
7 just talking about, is that the same person
8 that was in the photo that Guevara was holding
9 up?

10 A. I believe it was.

11 Q. Had you ever met Thomas Sierra at the time
12 that Guevara held that photo up at Grand and
13 Central?

14 A. I ain't never seen him before.

15 Q. Did you even know what Thomas Sierra looked
16 like before Guevara showed you that photo
17 at Grand and Central?

18 A. No.

19 Q. Did you have any idea whether that photo
20 Guevara was holding in his hand was the person
21 who shot your friend, Nuni?

22 MR. KIVETZ: Objection.

23 THE WITNESS: No.

24 MR. KIVETZ: Form.

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1 BY MR. ART:

2 Q. As you sit here today, do you have any reason
3 to believe that Thomas Sierra killed your
4 friend, Nuni?

5 MR. KIVETZ: Objection. Form.

6 THE WITNESS: Because I ain't seen
7 -- I ain't never seen the shooter's face. I
8 never seen the dude that shot him, you know, I
9 can't tell you that's the dude.

10 MR. ART: Okay. Let's mark this as
11 Exhibit 4, I believe.

12 (Whereupon, Melendez Exhibit No. 4
13 was marked for identification.)

14 BY MR. ART:

15 Q. Okay. Sir, have a look at the six photos here
16 that are in Exhibit 4. Okay?

17 Do you remember whether these are
18 the photos that Guevara had set out on the
19 table and in his hand when you came into Grand
20 and Central?

21 MS. BARBER: Objection. Leading.

22 MR. KIVETZ: Join.

23 THE WITNESS: I don't know what
24 pictures he had. I mean, they could have

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1 been. I mean, I wasn't really looking at
2 them. You know what I'm saying?

3 BY MR. ART:

4 Q. Okay. As you sit here today, do you recognize
5 this photo array?

6 A. I mean, man, it happened 20 some years ago.

7 Q. I hear you.

8 A. You know, I wasn't sitting there looking at
9 pictures. You know what I'm saying?

10 Q. So is that a no?

11 A. I don't know. I don't know what pictures he
12 had in front of me.

13 Q. After you looked at Guevara's photo array, the
14 police claim that you identified Thomas Sierra
15 in a live physical line-up.

16 Did Guevara or anyone else ever take
17 you to look at a live line-up?

18 A. No.

19 MS. BARBER: Objection. Form.

20 MR. KIVETZ: Objection. Form.

21 MS. BARBER: Foundation.

22 THE WITNESS: I ain't never looked
23 at a -- at an actual line-up. I looked at the
24 photos that were there. He had some photos in

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1 front of me. I ain't never went in a station
2 to point nobody out in no line-up or none of
3 that stuff.

4 BY MR. ART:

5 Q. So you never went into a room and looked
6 through a one-way mirror?

7 A. No.

8 MR. KIVETZ: Objection. Form.

9 BY MR. ART:

10 Q. Is any police claim that you viewed a line-up
11 false?

12 MS. BARBER: Objection. Form.

13 MR. KIVETZ: Objection. Form.

14 THE WITNESS: If they say I did,
15 yeah, it's false.

16 BY MR. ART:

17 Q. Okay. Changing subjects. At some point when
18 you were at Grand and Central, were you taken
19 outside to the parking lot?

20 A. Yeah.

21 Q. What did the police show you in the parking
22 lot?

23 A. They showed --

24 MS. BARBER: Objection.

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1 THE WITNESS: -- me a car.

2 MS. BARBER: Leading.

3 MR. KIVETZ: Join. Form.

4 Foundation.

5 MR. ART: What was the leading
6 objection? What was leading about it?

7 MS. BARBER: It's because you're --
8 you're implying the answer to your question in
9 your question.

10 MR. ART: By saying "what did the
11 police show you in the parking lot"?

12 MS. BARBER: Yeah. That implies
13 that the police showed him something. You can
14 simply ask him "what happened when you got
15 outside." You do not have to --

16 MR. ART: So the only question --

17 MS. BARBER: You don't have to --

18 MR. ART: The only appropriate
19 question --

20 MS. BARBER: -- insert facts --

21 MR. ART: -- is what happened?

22 MS. BARBER: -- into your question.

23 MR. ART: Okay. He just testified
24 he went out to the parking lot. I'm not

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1 allowed to ask what happened in the parking
2 lot?

3 MS. BARBER: That's not what you
4 asked.

5 MR. ART: Can you read back my
6 question?

7 All right. You know what, I'll --
8 let me restate the question.

9 BY MR. ART:

10 Q. What happened next?

11 A. Well, when I went to the -- to the parking
12 lot, he showed me a car.

13 Q. What kind of car did he show you?

14 A. He showed me a black Buick.

15 Q. Was the -- was the car -- strike that, please.

16 Who took you out to the parking lot?

17 A. Guevara.

18 Q. Was the car he showed you in the parking lot
19 the car you'd seen at the shooting?

20 A. No. That car didn't have no tints and no
21 rims.

22 Q. Which car had no tints and no rims?

23 A. The one he showed me.

24 Q. The one he showed you in the parking lot?

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1 A. Yeah.

2 MR. ART: Let's mark this as

3 Exhibit 5.

4 (Whereupon, Melendez Exhibit No. 5

5 was marked for identification.)

6 Q. Mr. Melendez, looking at Exhibit 5, I'll
7 represent to you that this is a photograph of
8 the car that detectives say you identified as
9 the shooter car in the parking lot at Grand
10 and Central the night you were there. Okay?

11 MS. BARBER: Steve, I'm just going
12 to object to you continuing to make
13 representations in your questions, which I
14 understand is fair to an extent, but the way
15 you're doing it with phrases like the "police
16 claim" and the "police allege" and things like
17 that, I think is unfair, and --

18 MR. ART: Is there anything --

19 MS. BARBER: -- so I object to that.

20 MR. ART: -- incorrect about the
21 representation?

22 MS. BARBER: I made my objection.

23 MR. ART: No. No. But I mean, for
24 the record, so that I can clarify, if needed,

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1 is --

2 MS. BARBER: Yeah, your tone.

3 MR. ART: -- there anything
4 incorrect about what I just said?

5 MS. BARBER: I think your tone is
6 incorrect.

7 MR. ART: Is there anything
8 factually incorrect about what I just said?

9 MS. BARBER: I made my objection.

10 Go ahead.

11 MR. ART: But, for the record,
12 since, you know, this is -- may be trial
13 testimony, is there anything factually
14 incorrect about the representation made?

15 MS. BARBER: I'm not being deposed.
16 I made my objection. If you cannot continue,
17 then you can't continue.

18 MR. ART: Okay.

19 MS. BARBER: But I'm not going to --

20 MR. ART: All right.

21 MS. BARBER: -- engage with you.

22 MR. ART: So if there is a factual
23 problem with the representation I made, we'll
24 rely on you to state it, otherwise, I'm going

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1 to move on. Okay?

2 MS. BARBER: I'm not being deposed.

3 MR. ART: I understand what you're
4 saying. I understand you have not stated any
5 factual basis for --

6 MS. BARBER: No.

7 MR. ART: -- objecting to my
8 representation.

9 MS. BARBER: I have not.

10 MR. ART: Great.

11 MS. BARBER: And that was not the
12 basis for my objection.

13 BY MR. ART:

14 Q. Sir, do you recognize this to be the car that
15 Guevara showed you in the parking lot at
16 Area 5?

17 A. That is the car. No tints. No rims.

18 Q. All right. Is this car in Exhibit 5 the car
19 that shot at you and that killed your friend?

20 A. Nah, it don't got no rims and no tints.

21 Q. When you say "rims," what do you mean?

22 A. Custom rims.

23 Q. And what would custom rims look like?

24 A. Well, I mean, they're like the rims I got on

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1 my car. You know, like -- you know, these are
2 factory rims, right here. The rims that are
3 custom, you buy them in the -- the rim shop.

4 Q. Okay. So, looking at Exhibit 5, the rims that
5 are on that car are what would have come from
6 the factory, is that correct?

7 A. Yeah, you know, factory.

8 MR. KIVETZ: Objection. Form and
9 foundation.

10 BY MR. ART:

11 Q. All right. And are the rims that you saw on
12 the shooter car fancier rims?

13 A. Yeah, they were --

14 MR. KIVETZ: Objection. Form.

15 THE WITNESS: They were -- they were
16 -- they were custom rims, you know, you buy
17 them in the rim shop, the rim store.

18 BY MR. ART:

19 Q. Okay. Did you tell Detective Guevara that was
20 not the car used in the shooting?

21 A. Yeah. I told him "this ain't the car."

22 Q. All right. I want to talk a little bit about
23 the statement that police say that you signed
24 at Area 5 that night. Okay?

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1 MR. KIVETZ: Objection. Form.

2 MR. ART: I'm showing you -- let's
3 mark this Exhibit 6.

4 (Whereupon, Melendez Exhibit No. 6
5 was marked for identification.)

6 BY MR. ART:

7 Q. Can you just take a moment and look at the
8 three pages in Exhibit 6, and just let me know
9 when you've had a chance to just glance at it.
10 Okay?

11 A. (Witness reviewing.)

12 Q. Have you had an opportunity to review that
13 statement marked as Exhibit 6, sir?

14 A. Yeah.

15 Q. All right. Looking at this top area of the
16 statement, where it says "Statement of Jose M.
17 Melendez," is that your handwriting up there?

18 A. Up here? (Gesturing.)

19 Q. Yes, sir.

20 A. No.

21 Q. Looking at the narrative section of this
22 statement that goes on for three pages, is
23 that in your handwriting?

24 A. No.

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1 Q. Turn to the third page, if you would. Up
2 here, in the fourth line down, where the dates
3 and locations are changed, do you see that
4 section?

5 A. Yeah.

6 Q. Is that your handwriting where the dates and
7 locations were changed?

8 A. No.

9 Q. Is it fair to say that someone else at the
10 police station wrote this statement?

11 MS. BARBER: Objection.

12 THE WITNESS: I didn't write it.

13 MR. KIVETZ: Form and foundation.

14 BY MR. ART:

15 Q. Do you know who wrote it?

16 A. No. This ain't my writing.

17 Q. Okay. Take a close look at your signature on
18 the first page in the lower left-hand corner.
19 Is that your signature?

20 A. Yeah, I believe that might be my signature.

21 Q. Do you even remember signing this statement,
22 sir?

23 MR. KIVETZ: Objection. Form.

24 THE WITNESS: I mean, I could have.

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1 I don't know.

2 BY MR. ART:

3 Q. Do you remember it as you sit here today?

4 MS. BARBER: Objection. Asked and
5 answered.

6 THE WITNESS: I don't know.

7 BY MR. ART:

8 Q. Okay.

9 A. That's not my writing, though, I'll tell you
10 that much.

11 Q. Look at your signatures on the third page. Do
12 you see one up here? (Gesturing.)

13 A. Yeah.

14 Q. Does that appear to be your signature?

15 A. That could.

16 Q. Do you see one down here, at the bottom of the
17 page? (Gesturing.)

18 A. Yeah.

19 Q. Do you have any idea why you signed the third
20 page twice?

21 MR. KIVETZ: Objection.

22 THE WITNESS: Nah.

23 MR. KIVETZ: Form and foundation.

24 BY MR. ART:

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1 Q. Do you have any idea why you would have signed
2 it down here, right at the bottom?

3 MR. KIVETZ: Objection. Form and
4 foundation.

5 THE WITNESS: No.

6 BY MR. ART:

7 Q. It's a bit weird, don't you think?

8 MR. KIVETZ: Objection.

9 MS. BARBER: Objection.

10 MR. KIVETZ: Form and foundation.

11 THE WITNESS: I don't know.

12 BY MR. ART:

13 Q. Let's look at what this statement says. Okay?

14 And I'm going to summarize.

15 It relates that you picked Nuni and
16 TiTi up, right?

17 A. Yeah.

18 Q. And you testified that that's true, right?

19 A. Yes.

20 Q. It memorializes that you all went for a drive,
21 right?

22 A. Yeah.

23 Q. And that's true, as well, correct?

24 A. Yeah.

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1 Q. You talk about the door of the shooter car
2 opening up, right?

3 A. Yeah.

4 Q. And that's true, as well, right?

5 A. Yeah. The door opened --

6 MR. KIVETZ: Objection.

7 THE WITNESS: -- of the shooter's
8 car, yeah.

9 BY MR. ART:

10 Q. And it talks about how you went west on
11 Wrightwood and then hung a right on Kimball,
12 right?

13 MR. KIVETZ: Same objection.

14 THE WITNESS: Yeah.

15 BY MR. ART:

16 Q. That's accurate, is that correct?

17 A. Yeah. That's correct.

18 Q. It talks about how there was a shooting.

19 MR. KIVETZ: Objection. Leading.

20 THE WITNESS: Yeah, there was a
21 shooting.

22 BY MR. ART:

23 Q. That part of the statement's true, too, right?

24 A. Yeah.

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1 MR. KIVETZ: Same objections.

2 You guys gotta give me a minute to
3 get in my objections.

4 BY MR. ART:

5 Q. Sir, isn't it fair to say that a lot of this
6 statement is just a statement of your account
7 of how the shooting went down?

8 MR. KIVETZ: Objection. Form.

9 Leading. Foundation.

10 THE WITNESS: Yeah. I mean, it's --
11 it's like I told them, the same way I'm
12 telling you now is the same way I told them,
13 you know, I was driving, you know, and all
14 this took place, you know.

15 BY MR. ART:

16 Q. Okay.

17 A. Yeah. You could say yeah.

18 Q. Let's take a look at some of the statements
19 that are on the last page of Exhibit 6. Okay.
20 So if you can flip to the last page, I'm going
21 to ask you about some of those.

22 Okay. It says that you, quote:

23 "Picked out the man you saw shooting at you
24 and his car."

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1 Do you see that statement? It is --
2 starts right here. (Gesturing.)

3 A. Right here?

4 Q. Yeah. Do you see that?

5 A. Yeah.

6 Q. You've already testified you didn't see the
7 face of the shooter, correct?

8 A. Nah, I didn't.

9 Q. So you didn't pick out any person that --

10 A. Nah, I didn't pick out nobody.

11 Q. All right. And you've already testified you
12 didn't pick out the car either, correct?

13 A. Right.

14 MR. KIVETZ: Objection.

15 BY MR. ART:

16 Q. In fact, you told Guevara that the car was not
17 the one you had seen, correct?

18 MR. KIVETZ: Objection.

19 THE WITNESS: The one he showed me
20 wasn't the car.

21 BY MR. ART:

22 Q. Okay. So is that part of the statement that I
23 just read to you true or is it false?

24 MR. KIVETZ: Objection.

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Conducted on August 13, 2019

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1 THE WITNESS: No, I didn't pick out
2 nobody.

3 BY MR. ART:

4 Q. So it's false, is that correct?

5 A. Yeah.

6 Q. All right. The statement also says that you
7 -- in the next paragraph, it states that you
8 saw a line-up on May 30th, 1995.

9 Do you see that?

10 A. Yeah.

11 Q. Did you ever see a live line-up?

12 A. I told --

13 MS. BARBER: Objection. Asked and
14 answered.

15 THE WITNESS: -- you I ain't never
16 went to no line-up.

17 BY MR. ART:

18 Q. So that part of the statement is false, as
19 well, correct?

20 A. Yes.

21 Q. Okay. Nearly done. I want to show you a
22 police report that was written by detectives
23 at Area 5 about this investigation. Okay?

24 We'll mark that as the next one.

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(Whereupon, Melendez Exhibit No. 7
was marked for identification.)

3 BY MR. ART:

4 Q. Okay. Showing you what we've marked -- okay.
5 I'm showing you a police report marked as
6 Exhibit 7, sir.

7 First question: Have you ever seen
8 this police report in your life?

9 A. No.

10 Q. All right. Turn to page 4, if you would.
11 You'll see page numbers at the top. Okay. In
12 the third paragraph to the bottom of that
13 page, sir, the one that starts "on 30 May
14 '95." Do you see that paragraph?

15 Down.

16 | A. This?

17 Q. That one, right there. (Gesturing.)

18 Okay. In the middle of that
19 paragraph, it says, quote: "Jose Melendez
20 said (sic) he would only be able to identify
21 the shooter."

22 Do you see that sentence in the
23 report?

24 A. Yeah.

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1 Q. Sir, isn't that the exact opposite of what you
2 said?

3 A. Yeah. I told him I ain't seen nobody. I
4 ain't seen the face of the shooter.

5 Q. Okay. It says, also, that you, quote:
6 "Identified the photo of Thomas Sierra as the
7 person who shot and killed Noel Andujar."

8 Do you see that sentence?

9 A. Yeah.

10 Q. Did you ever tell Detective Guevara or anyone
11 else that?

12 A. No. He's the one that said that was the
13 shooter. I ain't never told him that's the
14 shooter. He said that's the shooter.

15 Q. Okay. Further down that page, it says on May
16 -- or on 30 -- strike that, please.

17 Further down the page, it says: "On
18 30 May 1995, at 1800 hours, a line-up was
19 conducted at Area 5's (sic) Detectives, (See
20 line-up supp.) Jose Melendez and Alberto
21 Rodriguez viewed this line-up separately.
22 They both identified Thomas Sierra as the
23 person who shot and killed Noel Andujar."

24 Do you see that sentence in the

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1 report?

2 A. Yeah.

3 Q. Sir, once again, did you ever view a live
4 line-up?

5 A. I didn't see no live line-up. All he showed
6 me was pictures.

7 Q. Okay. Last one. Turn to page 5, please. In
8 the middle paragraph on that page, the last
9 sentence says, quote: "They both identified"
10 -- let me go back a little bit.

11 The last -- the third to the last
12 sentence says: "The R/Dets asked eyewitness
13 Jose Melendez and Alberto Rodriguez to walk
14 through this parking lot and see if the car
15 involved in the shooting of Noel Andujar was
16 present. They both identified the black Buick
17 Park Avenue," then it has a VIN number, "as
18 the car from which Thomas Sierra fired his
19 gun."

20 Do you see that sentence, sir?

21 A. Yeah.

22 Q. What did you actually tell Guevara in the
23 parking lot?

24 A. I told him that wasn't the car.

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1 Q. So that's another false statement in this
2 report, correct?

3 A. Yes, it is.

4 Q. All right. We're done with that report.

5 All right. Last subject, sir. You
6 testified at Thomas Sierra's criminal trial in
7 1976, didn't you?

8 A. I believe, yeah.

9 Q. You swore to tell the truth at that trial,
10 didn't you?

11 A. Yes.

12 Q. Okay. And is it true that the testimony that
13 you provided at Thomas Sierra's trial back in
14 1996 is the same testimony you've provided
15 today?

16 A. Yeah.

17 MS. BARBER: Objection. Foundation.

18 THE WITNESS: Yeah, I'm saying the
19 same thing. I told them that's not car. He
20 showed me -- I never seen no line-up, you
21 know, and he showed me just photos. That was
22 it, I mean.

23 BY MR. ART:

24 Q. At the trial, did you ever implicate Thomas

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1 Sierra in the shooting of your friend Nuni
2 Andujar?

3 A. No.

4 MR. KIVETZ: Objection. Form and
5 foundation.

6 BY MR. ART:

7 Q. Okay. Did you owe Thomas Sierra any kind of
8 favor?

9 A. For what? I didn't even know him.

10 Q. Okay. At his trial, did you just tell the
11 truth about what happened?

12 A. Yeah.

13 MR. ART: Okay. I have no further
14 questions. Thank you for your time.

15 MR. LEINENWEBER: Could we have five
16 minutes?

17 MR. ART: Sure.

18 (Brief pause.)

19 EXAMINATION

20 BY MR. LEINENWEBER:

21 Q. Thanks, again, Mr. Melendez. I understand
22 that this was a long time ago and I certainly
23 understand it brings up a terrible painful
24 memory, but your testimony, I believe, would

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1 be helpful for us to figure out what happened
2 back then. And so the people sitting around
3 the table here, we certainly appreciate your
4 cooperation. This is not the ideal way to
5 spend a Tuesday morning, but again, thank you.

6 So some of the questions I'll ask
7 are going to touch a lot on what Mr. Art just
8 asked you, and that's -- I think you've been
9 through this before, is that correct?

10 A. What you mean been through?

11 Q. You had a deposition --

12 A. Yeah.

13 Q. -- a few years ago, is that right?

14 A. Yeah.

15 Q. And it was the same type of thing?

16 A. I guess it's the same thing, it was a
17 deposition, yeah.

18 Q. Right. And so, you know, please just bear
19 with us when we sometimes seem like we're
20 focusing on little things. We're just trying
21 to -- just like you, we're trying to piece
22 together what happened back then. And, of
23 course, we weren't there.

24 So I'm going to ask you to take a

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1 look, if you would, at the statement that you
2 gave.

3 MR. LEINENWEBER: Steve, what number
4 was that?

5 MR. ART: Six.

6 MR. LEINENWEBER: Six. Would you
7 mind showing that to the witness.

8 BY MR. LEINENWEBER:

9 Q. I believe, you know, this is the one that you
10 were just questioned about a couple minutes
11 ago. Is that correct?

12 A. Yeah.

13 Q. Okay. And I think you stated that your
14 signature is on there like four times. Is
15 that right?

16 A. Nah, I didn't state that, it's just on there.

17 Q. Yeah. Okay. And is it fair to say this is so
18 long ago that you don't remember giving this
19 statement?

20 MR. ART: Objection. Form. Go
21 ahead.

22 THE WITNESS: No, I know I didn't
23 give -- I didn't -- I didn't write that
24 statement.

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1 BY MR. LEINENWEBER:

2 Q. No. I understand.

3 A. And as far as giving, there's a lot of stuff
4 in there that I ain't even seen. You know
5 what I'm saying?

6 Q. Okay. Okay. Well, then, what I'll do is, and
7 we'll just take a minute or two, I'll take you
8 through that to see, again, what you did say
9 and what you didn't say.

10 Okay? Is that fair enough?

11 A. I mean, you -- you could go -- you could --
12 you could read it to me and I'm still going to
13 tell you I --

14 Q. Absolutely.

15 A. You know, how -- how is he going to put
16 something that I didn't say on there? You
17 know what I'm saying?

18 Q. For sure. Well, let's go through it and we'll
19 see. Okay?

20 So it says -- and I'm going down to
21 the second paragraph on that page 1. Okay?
22 "Jose Melendez states that he's 26 years old
23 and lives at 1742 West Division Street,
24 Chicago, Illinois."

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1 Is that true?

2 MR. ART: Objection. Hearsay.

3 THE WITNESS: I mean, it could have
4 been. I lived at 1742, yeah, I lived there
5 before.

6 BY MR. LEINENWEBER:

7 Q. Okay. And on May 30th of 1995, were you 26
8 years old?

9 A. I mean, I don't know, I mean.

10 Q. Well, let's do the math.

11 A. You can do the math.

12 Q. What's your birthday?

13 A. '69.

14 Q. When in 1969?

15 A. In March.

16 Q. March. So March of 1969, you'd agree with me,
17 to March of 1995, that's 26 years, correct?

18 A. Could be.

19 Q. I'm sorry?

20 A. Could be.

21 Q. Okay. And then the next sentence says: "Jose
22 Melendez states that he can speak, read and
23 write English."

24 That's correct, right?

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1 MR. ART: Objection. Hearsay.

2 THE WITNESS: I can read and write
3 English.

4 BY MR. ART:

5 Q. And at that time, you could read, write and
6 speak English, is that correct?

7 A. Yeah.

8 Q. Okay. So that's right?

9 A. Yeah.

10 Q. "Jose Melendez states that on May 23rd, 1995,
11 he drove to his friend Alberto Rodriguez's
12 house at 2717 North Hoyne to pick him up."

13 Is that correct?

14 MR. ART: Objection. Hearsay. Go
15 ahead.

16 THE WITNESS: I mean, I drove to the
17 projects, but as far as address, I don't know
18 nobody's address over there.

19 BY MR. ART:

20 Q. Okay. It was the Lathrop Homes, right?

21 A. Yeah, Lathrop Homes.

22 Q. Yeah. Any reason to disbelieve that the
23 Lathrop Homes was at 2717 North Hoyne?

24 MR. ART: Objection. Form. Go

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1 ahead.

2 THE WITNESS: I mean, it's on Damen
3 and I want to say Diversey.

4 BY MR. LEINENWEBER:

5 Q. Okay. And I'm going to start at the last
6 sentence there: "Jose Melendez states that he
7 arrived at Alberto Rodriguez's house at
8 approximately 10 p.m."

9 Is that true?

10 MR. ART: Objection. Hearsay. Go
11 ahead.

12 THE WITNESS: It wasn't -- it wasn't
13 that late, man.

14 BY MR. LEINENWEBER:

15 Q. It wasn't that late?

16 A. Nah, it wasn't late, not no ten o'clock.

17 Q. Okay. "Jose Melendez stated that he picked up
18 his two friends, Alberto Rodriguez and Noel
19 Andujar."

20 MR. ART: Objection.

21 MR. LEINENWEBER: Is that correct?

22 MR. ART: Sorry. Objection.

23 Hearsay.

24 THE WITNESS: I picked both of them

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1 up the day that I went over there.

2 BY MR. LEINENWEBER:

3 Q. Right. So that's true?

4 A. Yeah.

5 Q. Okay. "Jose Melendez states that he and
6 Alberto Rodriguez and Noel Andujar began
7 driving toward Noel Andujar's girlfriend's
8 house on Kedzie and Armitage Streets."

9 Is that true?

10 MR. ART: Objection. Hearsay. Go
11 ahead.

12 THE WITNESS: I mean, I was going
13 towards the neighborhood, yeah, and Nuni's
14 lady stayed, yeah, at Kedzie and Armitage.

15 BY MR. ART:

16 Q. So that sentence is true, right?

17 A. Yeah.

18 MR. ART: Same objection.

19 BY MR. LEINENWEBER:

20 Q. "Jose Melendez states that as they approached
21 the stop sign at Milwaukee Avenue and Logan
22 Boulevard, he noticed a black Park Avenue
23 sedan waiting at the stop sign occupied by one
24 black -- male black in the back seat and two

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1 male Hispanics in the front seat."

2 Is that correct?

3 MR. ART: Objection. Hearsay.

4 THE WITNESS: I mean, it could be.

5 BY MR. LEINENWEBER:

6 Q. That's what you say, right?

7 A. I don't remember saying nothing about

8 Milwaukee, you know, because I was -- I was
9 coming off Logan.

10 Q. Okay. Well, other than Milwaukee, is that
11 sentence correct?

12 MR. ART: Objection. Hearsay.

13 THE WITNESS: I mean, it's there,
14 yeah, I mean.

15 BY MR. LEINENWEBER:

16 Q. I'm sorry?

17 A. I mean, as far as noticing, yeah, I mean, it
18 was two Hispanics in the car and a black dude,
19 but I can't tell you what they looked like.

20 Q. Well, that's true, at least this statement.
21 That's my question, that line, was that there
22 was a male black in the back seat and two male
23 Hispanics in the front seat. That's correct?

24 A. It could be, yeah. It could be, yeah. I told

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1 them there was a black -- somebody was black
2 and two Hispanics. That's it. I don't know
3 about -- you know, that's -- I did tell them
4 that.

5 MR. ART: Same objection.

6 BY MR. LEINENWEBER:

7 Q. "Jose Melendez states that he pulled up next
8 to the black Park Avenue sedan and looked at
9 the passenger sitting in the front passenger
10 seat and saw the passenger 'throwing down the
11 crown' and 'representing.'"

12 Is that correct?

13 MR. ART: Same objection.

14 THE WITNESS: The dude threw up the
15 Cobra sign at me. And I didn't -- I wasn't
16 right next to the car. You know, he was in
17 front of me and I could see his hand on the
18 window. (Gesturing.)

19 So as far as me driving up to the
20 car, I never drove up to the car because I
21 already knew there was something funny
22 happening. So there ain't no sense in me
23 driving up to a car when I know something is
24 gonna -- something is gonna happen.

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1 BY MR. LEINENWEBER:

2 Q. "Jose Melendez says he knew the passengers'
3 actions to be gang symbols."

4 That's correct, right?

5 MR. ART: Same objection.

6 THE WITNESS: Excuse me. What you
7 say, again?

8 BY MR. LEINENWEBER:

9 Q. Sure. "Jose Melendez states that he knew the
10 passengers' actions to be gang symbols."

11 A. Yeah, when he threw up the Cobra, that's --

12 Q. Yeah. So that sentence is correct?

13 A. Yeah.

14 MR. ART: Same objection.

15 BY MR. LEINENWEBER:

16 Q. So continuing on the middle of page 2 there:

17 "Jose Melendez states that he began to drive
18 away and the black Park Avenue followed on his
19 left-hand side."

20 That's correct, right?

21 A. Well, when I drove away, he wasn't never gonna
22 -- when I -- when I hit it, when I shot up
23 Wrightwood, that's a two-way street, you know,
24 and he was on -- he was on this side

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1 (gesturing). So he was never on my left. If
2 he did come, he was behind me. He was never
3 on my left-hand side when I was driving up
4 Wrightwood.

5 Q. Not when you were driving up Wrightwood, but
6 before you got to Wrightwood, he was, correct?

7 A. Well, I mean, when we were turning towards the
8 eagle --

9 Q. Right.

10 A. -- he went in the front and the left-hand
11 side.

12 Q. He's in front, to your left, and then he was
13 side-by-side with you, correct?

14 A. Not side-by-side. He was up a little.

15 Q. But, at some point, your -- as you stated, at
16 that point when you swerved the car to the
17 left, when he was -- the passenger was opening
18 the door, the cars were side-by-side, correct?

19 A. Well, at that point, yeah.

20 Q. "Jose Melendez states that he continued to
21 look at the car and its occupants to his
22 left."

Is that correct?

24 MR. ART: Objection. Hearsay.

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1 THE WITNESS: No. I -- I mean, once
2 I -- once I -- I -- I threw the car at the
3 door, he shut it, and I shot to my -- to my
4 right, towards Wrightwood. So I wasn't
5 sitting there staring at nobody, you know.

6 BY MR. LEINENWEBER:

7 Q. Right. But you stated before that when you
8 saw the car first waiting for you -- right?

9 A. Excuse me?

10 Q. When you saw that car, when you first saw that
11 car, you said to yourself that something might
12 be wrong, right?

13 MR. ART: Objection. Form.

14 Foundation.

15 MR. LEINENWEBER: Is that right?

16 MR. ART: Mischaracterizes
17 testimony.

18 THE WITNESS: I mean, he -- he -- he
19 stalled, you know, like --

20 BY MR. LEINENWEBER:

21 Q. Right.

22 A. -- waiting for us to come. So I mean, you
23 know, we gangbangers, so we already got
24 instincts for this stuff.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. Right.

2 A. So, you know, as far as something was gonna
3 happen. You know what I'm saying?

4 Q. Right. And you knew that the first time you
5 saw that car waiting for you, is that correct?

6 MR. ART: Objection. Form.
7 Foundation.

8 THE WITNESS: I can't tell you I
9 knew that. But, you know, when we went up to
10 the -- to the stop sign that -- he kind of
11 waited, and I knew some words gonna be --
12 something was gonna happen, you know.

13 BY MR. LEINENWEBER:

14 Q. Right. You knew that -- you knew that
15 something was going to happen, correct?

16 MR. ART: Objection. Form.
17 Foundation.

18 THE WITNESS: Could be. I mean,
19 what were they waiting for?

20 BY MR. LEINENWEBER:

21 Q. Right. Exactly. You knew that it was
22 something unusual, right? It wasn't like a
23 little old lady in the car, correct?

24 MR. ART: Same objection.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 THE WITNESS: I didn't know who was
2 in the car.

3 BY MR. LEINENWEBER:

4 Q. Right. But you knew that something was going
5 to happen?

6 A. Could be.

7 MR. ART: Objection. Asked and
8 answered.

9 BY MR. LEINENWEBER:

10 Q. And so, as a result of that, your senses were
11 heightened, right?

12 A. My what?

13 Q. Your senses were heightened, right?

14 A. Yeah. I mean --

15 MR. ART: Objection. Form.

16 THE WITNESS: -- I'm a gangbangers.

17 I was gang-banging at the time, yeah.

18 BY MR. LEINENWEBER:

19 Q. Correct.

20 A. I look at -- I mean, I notice -- I try to
21 notice my surrounding, and that's what we do.

22 Q. Right. You know, you were -- you were a
23 pretty tough guy at the time and you were --

24 A. No. I wasn't pretty tough. I was just --

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 like I said, I was just gang-banging.

2 Q. Right.

3 A. I'm not saying I'm tough.

4 Q. Okay. But as a gangbanger, like you said, you
5 were really aware of what was going on around
6 you?

7 A. I try to be.

8 MR. ART: Objection. Form and
9 foundation.

10 BY MR. LEINENWEBER:

11 Q. Because trouble can happen at any time.

12 MR. ART: Same objections.

13 THE WITNESS: I try to be aware of
14 my surrounding.

15 BY MR. LEINENWEBER:

16 Q. And so this was one of those times when you
17 were trying to be aware of your surroundings?

18 MR. ART: Objection. Form and
19 foundation.

24 BY MR. LEINENWEBER:

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. You were in the Latin King gang at that time?

2 A. Yeah.

3 MR. ART: Objection. Relevance.

4 BY MR. LEINENWEBER:

5 Q. Do you know what gang controlled that area
6 that you were driving through at that time?

7 A. Well, I mean, as far as that little area right
8 there, there's some OAs there. And, you know,
9 I mean, everybody cruises through there.

10 Q. Okay. And OA is what, Orquestra Albany, is
11 that correct?

12 A. Yeah.

13 Q. And there were Spanish Cobras, right, in that
14 area?

15 MR. ART: Objection. Form.

16 THE WITNESS: I can't -- I mean,
17 like I said, everybody drives through there,
18 because even I drive through there.

19 BY MR. LEINENWEBER:

20 Q. Okay. When you say "everybody," maybe you can
21 help us out. If you had a --

22 A. All type of people drive through there.

23 Q. Right. But let's say -- let's just stick with
24 like gangs at this time. How many different

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 types of gangs were around at that time in
2 that area?

3 MR. ART: Objection. Relevance.
4 Foundation. Form. Go ahead.

5 THE WITNESS: I mean, there's all
6 kind of gangsters there. Come on, you know
7 Humboldt Park.

8 BY MR. LEINENWEBER:

9 Q. Right.

10 A. You know, there's all types of gangs.

11 Q. Humboldt Park, in 1995, it's fair to say there
12 were a lot of different gangs, right?

13 MR. ART: Same objections.

14 THE WITNESS: I mean, there's gangs
15 everywhere, you know.

16 BY MR. LEINENWEBER:

17 Q. But, at least at that time, at that place,
18 there were a lot of gangs, right?

19 MR. ART: Same objections.

20 THE WITNESS: There's a gang there
21 today. You know what I'm saying?

22 BY MR. LEINENWEBER:

23 Q. Sure. No doubt.

24 A. Okay. So --

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Conducted on August 13, 2019

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1 Q. No doubt.

2 A. -- there's gangs everywhere.

3 Q. Right. And as a result of that, you've gotta
4 be aware and you've gotta be ready for things
5 to happen, correct?

6 MR. ART: Same objections.

7 THE WITNESS: I mean, everywhere I
8 go, I try to be aware, at that time.

9 BY MR. LEINENWEBER:

10 Q. Right.

11 A. Because I was gang-banging.

12 Q. Absolutely. So on that day, you were ready
13 and aware that things might happen, correct?

14 MR. ART: Objection. Form.

15 Foundation. Relevance.

16 THE WITNESS: I wasn't ready and
17 aware, I was just -- like I said, I went to
18 pick up my friends and I was driving back
19 towards the neighborhood.

20 BY MR. LEINENWEBER:

21 Q. Okay.

22 A. You know, if -- if something happen, it just
23 happen out the blue.

24 Q. Right. Trouble could happen at any time,

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 right?

2 MR. ART: Same objections.

3 BY MR. LEINENWEBER:

4 Q. Is that fair to say?

5 A. I mean, anything could happen at any time.

6 Q. Right. Okay. Let's just get back to the
7 statement, then.

8 "Jose Melendez states that he saw
9 the passenger pull up a white hood over his
10 head and open his door."

11 That's true, right?

12 MR. ART: Objection. Hearsay.

13 THE WITNESS: I don't remember. I
14 can't -- I can't remember.

15 BY MR. LEINENWEBER:

16 Q. Okay. But it would be fair to say, because it
17 was so long ago, right, that your memory was a
18 lot better back in the day, correct?

19 A. I mean, back in the day, I used to smoke all
20 the time. So, I mean, I can't recall.

21 Q. Sure. Fine. But, at least in May of -- on
22 May 30th, 1995, you'd agree with me that you
23 would remember more of the details of this
24 incident than sitting here in, what is this,

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 August 2019, is that correct?

2 MR. ART: Objection. Asked and
3 answered.

4 THE WITNESS: Like I said, at that
5 time, man, I used to smoke, man.

6 BY MR. LEINENWEBER:

7 Q. Right.

8 A. I smoked weed, you know. I drank, you know.

9 So, I mean, I don't know what you're trying to
10 get me to tell you, but I mean, I can't
11 remember if I did tell them this or not. You
12 know, as far as me telling them a white
13 hoodie, I don't remember. I can't recall.

14 Q. Sure. No. And that's no problem. As I'm
15 sure Mr. Art told you, anyone else who's ever
16 taken your deposition, if you don't remember,
17 you don't remember.

18 A. Right.

19 Q. But you don't think your memory is better now,
20 is it?

21 MR. ART: Objection. Asked and
22 answered.

23 THE WITNESS: What you mean it's
24 better now?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 BY MR. LEINENWEBER:

2 Q. Well, you said back in the day --

3 A. I mean, I don't -- I don't -- I don't smoke,
4 you know. I don't do none of those drugs I
5 was doing back in those days.

6 Q. Okay.

7 A. You know, not just because I don't like drugs,
8 it's just because I don't -- you know, I
9 stopped smoking and all that a long time ago,
10 you know, after all this happened.

11 Q. So you do think that because you don't smoke
12 or use drugs or alcohol now, that your memory
13 of what happened in 1995 is better now?

14 A. No. I can't -- I ain't saying that. You're
15 saying that.

16 Q. No. I'm just asking. I'm not trying to put
17 words in your mouth.

18 A. I mean, like I say, if I don't remember, I'm
19 going to tell you I don't recall.

20 Q. Okay. What type of drugs were you using at
21 that time?

22 A. Well, I was drinking and I was smoking at that
23 time, back in the day.

24 Q. Right. Okay. And smoking what, marijuana?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 A. Yeah.

2 Q. Were you using heroin at that time?

3 A. No.

4 Q. You did use heroin at some point, right?

5 A. Yeah.

6 MR. ART: Objection. Relevance.

7 THE WITNESS: In my 30s.

8 BY MR. LEINENWEBER:

9 Q. Okay. And so for how long did you use heroin?

10 MR. ART: Objection. Relevance.

11 Completely irrelevant to the case.

12 THE WITNESS: Yeah. I mean, like
13 why? Does it matter that I used heroin?

14 BY MR. LEINENWEBER:

15 Q. No. I'm glad you don't use heroin.

16 A. Okay. Then, I mean --

17 MR. ART: I object to the commentary
18 and to the relevance.

19 MR. KIVETZ: We, also, object to
20 your commentary and your objection.

21 THE WITNESS: I mean, if I did
22 heroin or whatever, it ain't got nothing to do
23 with this. This is way past when this
24 happened.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 BY MR. LEINENWEBER:

2 Q. Agreed. Agreed. But what we're trying to
3 figure out is is let's say doing heroin in
4 your 30s, did that affect your memory of what
5 happened.

6 MR. ART: Objection. Relevance.

7 Without basis on any science. Go ahead.

8 THE WITNESS: I mean, nah. I mean,
9 there's things that -- I'm not saying it
10 messed my brain up or nothing like that, it's
11 just what does that got to do with anything?
12 I mean, I did it. You know, everybody does
13 whatever they do. You know what I'm saying?
14 I stopped doing it, you know, and I don't know
15 why you even asking me about the heroin.

16 BY MR. LEINENWEBER:

17 Q. Because I'm trying to figure out, like I said,
18 if anything has affected your memory from when
19 this happened, besides the passage of time.

20 A. Uh-uh. I mean, nah. I ain't -- it doesn't
21 affect any memory.

22 Q. Okay. Let's continue, then.

23 "Jose Melendez states that he turned
24 right on Kimball and the Park Avenue continued

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 on down Wrightwood."

2 That's correct, right?

3 A. Yeah.

4 MR. ART: Objection.

5 THE WITNESS: When I turned off
6 Kimball, he kept going down Wrightwood.

7 BY MR. LEINENWEBER:

8 Q. Let's turn to the last page. It says that
9 "his friend, Noel Andujar, had been shot in
10 the head."

11 And that was true, right?

12 A. Yeah.

13 MR. ART: Objection. Hearsay.

14 BY MR. LEINENWEBER:

15 Q. That is true, correct?

16 A. Yeah. He got shot in the head.

17 Q. "Jose Melendez states that he saw a photo
18 line-up of six photos on May 30th, 1995, at
19 Area 5 VC."

20 That's correct, that happened?

21 MR. ART: Objection. Hearsay.

22 THE WITNESS: I saw a photo line-up
23 when they took me to the station. When
24 Guevara came and picked me up, I saw a photo

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 line-up.

2 BY MR. LEINENWEBER:

3 Q. Okay.

4 A. That, I did see.

5 Q. So that's true, correct?

6 A. Yeah, a photo line-up.

7 Q. "Jose Melendez states that he picked out the
8 man he saw shooting at him and his car on
9 May 23rd, 1995."

10 Is that correct?

11 A. Nah, that's --

12 MR. ART: Objection.

13 THE WITNESS: -- not correct.

14 MR. ART: Asked and answered.

15 THE WITNESS: I never picked him
16 out.

17 BY MR. LEINENWEBER:

18 Q. It's true, though, that at the time you were
19 with the police, you were treated well, you
20 were never mistreated, is that correct?

21 A. I mean, I was in the station, they never like
22 -- they ain't do nothing to me.

23 Q. Right. No one threatened you, correct?

24 A. As far as I could tell, no.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. No one pushed you around, is that correct?

2 A. I don't --

3 Q. No one pushed you around, correct?

4 MR. ART: Objection. Form.

5 THE WITNESS: No.

6 MR. ART: Mischaracterizes his
7 testimony. Go ahead.

8 BY MR. LEINENWEBER:

9 Q. And no one was abusive to you in any way, is
10 that correct?

11 A. No.

12 Q. Okay. No one forced you to do anything, is
13 that correct?

14 MR. ART: Objection.

15 Mischaracterizes his testimony. Form and
16 foundation.

17 THE WITNESS: Doing like what? What
18 you talking about, as far as doing what?

19 BY MR. LEINENWEBER:

20 Q. They didn't say "you have to pick out Thomas
21 Sierra," correct?

22 A. Nah, but I ain't never picked out Thomas
23 Sierra.

24 Q. My question is --

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 A. Nah, they ain't -- they ain't tell me to pick
2 out nobody. I mean, I ain't never picked him
3 out, period.

4 Q. Right. But they didn't say "you have to pick
5 out Thomas Sierra," correct?

6 MR. ART: Same objections. Asked
7 and answered.

8 THE WITNESS: Nah, they ain't tell
9 me, no.

10 BY MR. LEINENWEBER:

11 Q. "Jose Melendez says that he saw a line-up on
12 May 30th, 1995, and he picked out the man that
13 shot at him and his car on May 23rd, 1995."

14 Is that correct?

15 MR. ART: Objection.

16 THE WITNESS: False.

17 BY MR. LEINENWEBER:

18 Q. So that's a mistake, correct?

19 A. Yeah, I ain't seen no line-up.

20 Q. Have you talked to Alberto Rodriguez about
21 this case?

22 A. Have I talked to him?

23 Q. Yes.

24 A. No. I don't talk to nobody. I don't call

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 nobody, none of my friends, I don't associate
2 with them no more.

3 Q. Did you ever talk to Alberto Rodriguez about
4 this case after it happened?

5 A. After it happened, no. Why would I?

6 Q. So you never -- you never spoke to him about
7 the shooting or anything like that?

8 A. Nah.

9 MR. ART: Objection. Form.

10 BY MR. LEINENWEBER:

11 Q. Are you aware that Alberto Rodriguez said that
12 it was Thomas Sierra that shot Noel?

13 A. No, I'm not aware of that.

14 Q. Are you aware that Alberto Rodriguez said that
15 he picked Thomas Sierra out of a line-up?

16 A. I'm not aware of that either.

17 Q. Are you aware that he said he picked Thomas
18 Sierra out of a line-up the same day that you
19 picked Thomas Sierra out of a line-up?

20 MR. ART: Objection to hearsay, to
21 this --

THE WITNESS: I'm not aware --

23 MR. ART: -- whole line of questions
24 about what --

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 THE WITNESS: I mean, I ain't talked
2 to him about, you know -- just, you know,
3 about whatever. I mean, I ain't -- after it
4 happened, I mean, I ain't had nothing -- I
5 didn't have to talk about this. You know what
6 I'm saying?

7 BY MR. LEINENWEBER:

8 Q. Right. Does it surprise you that he says
9 Thomas Sierra did it?

10 MR. ART: Objection. Hearsay.

11 THE WITNESS: I mean --

12 MR. ART: It mischaracterizes what
13 Alberto Rodriguez --

14 THE WITNESS: -- I don't know.

15 MR. ART: -- says.

16 THE WITNESS: I can't -- I can't
17 control what Alberto says what I said. You
18 know what I'm saying?

19 What I'm telling you is I never seen
20 a line-up. I never seen the car. You know,
21 as far as going to the -- to the parking lot,
22 that car that he showed me wasn't the car, you
23 know. And I never seen a line-up. The photos
24 were there, like I told you, you know. I

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1 never pointed nobody out, you know.

2 BY MR. LEINENWEBER:

3 Q. Okay. It says: "Jose Melendez states he's
4 been treated well by the police and the
5 assistant state's attorney."

6 That's correct, right?

7 MR. ART: Objection. Hearsay.

8 THE WITNESS: I mean, as far as that
9 day me being in the station, I mean, they
10 ain't beat me up or nothing. You know what
11 I'm saying? If that's what you're trying to
12 get at, you know, I mean -- I mean, they just
13 took me there --

14 BY MR. LEINENWEBER:

15 Q. Right.

16 A. -- to ask me --

17 Q. So that's true?

18 A. -- questions.

19 Q. That's true, correct?

20 A. You know, as far as them treating me well,
21 that's what they say, you know.

22 Q. And I'm asking you --

23 A. I mean --

24 Q. -- if that's true.

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Conducted on August 13, 2019

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1 A. -- like I'm saying, they ain't put no hands on
2 me or nothing.

3 Q. Right. And I'm asking you if that's true,
4 were you treated well?

5 MR. ART: Same objection.

6 THE WITNESS: I mean, what you mean
7 well? What you mean by that? I mean, they
8 ain't -- they ain't -- like I'm trying to tell
9 you, they ain't put their hands on me. They
10 ain't threatened me. None of that, you know.
11 They came and got me, I went there, and
12 whatever they talked to me about, we talked,
13 and that was it, you know.

14 BY MR. LEINENWEBER:

15 Q. But you were never handcuffed or locked up or
16 anything like that, correct?

17 A. As I recall, no.

18 Q. "Jose Melendez states that he was not made any
19 promises and was not threatened in any way."
20 That's true, correct?

21 MR. ART: Objection. Hearsay.

22 THE WITNESS: What would they
23 promise me for? I mean, they just took me
24 there to question me, I guess.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 BY MR. LEINENWEBER:

2 Q. But no threats were made against you, no
3 promises?

4 A. I just told you that.

5 Q. "Jose Melendez states that he was not under
6 the influence of drugs or alcohol at the time
7 he gave this statement."

8 That's true, correct?

9 MR. ART: Same objection.

10 THE WITNESS: That, I can't -- I
11 can't recall. But like -- but like I said, I
12 used to smoke at that time, so, you know.

13 BY MR. LEINENWEBER:

14 Q. It says: "Jose Melendez states that he has
15 read this entire statement and that he has
16 made any and all corrections to this statement
17 that he deemed necessary."

18 That's true, correct?

19 MR. ART: Same objection.

20 THE WITNESS: I ain't write this
21 statement.

22 BY MR. LEINENWEBER:

23 Q. But you wouldn't have signed something that
24 wasn't true, correct?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 MR. ART: Objection.

2 Mischaracterizes his --

3 THE WITNESS: Like I said, I didn't
4 write the statement.

5 BY MR. LEINENWEBER:

6 Q. I fully understand that you didn't write this
7 statement. Someone wrote this statement out
8 for you after you told them what happened,
9 correct?

10 A. I ain't -- I ain't tell them that it happened.
11 Whoever wrote this, they wrote it.

12 And, you know, like I told you, you
13 know, a lot of my friends are locked up, you
14 know. And, you know, people just pick them
15 out just to, you know, to have them locked up
16 for a while. And this is the same thing, you
17 know, he told me "this is the guy." So I
18 said, "okay, I'll sign it," and that's it. I
19 ain't never going -- I ain't going to -- you
20 know, my friend just got killed, so it didn't
21 matter to me.

22 Q. So what you're -- basically, what you're
23 saying is a lot of people at that time, in the
24 gang world, would finger someone for a crime

Transcript of Jose Melendez
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1 they didn't commit, is that correct?

2 A. I can't tell you that. I don't know.

3 Q. Isn't that what you just said would happen?

4 A. No. I --

5 MR. ART: I object. That
6 mischaracterizes the witness's testimony.

7 THE WITNESS: This is probably what
8 I did. You know what I'm saying? As far as,
9 you know, like I'm saying that, you know, I --
10 he told me "this is the guy."

11 "Okay, it's the guy." That's it.

12 You know what I'm saying?

13 BY MR. LEINENWEBER:

14 Q. Okay. So you -- you're saying that you picked
15 out Thomas Sierra --

16 A. No. I didn't pick out Thomas Sierra. He said
17 >this is the guy."

18 Q. Let me just finish my question. So you're
19 saying that you knew Thomas Sierra didn't do
20 it, but you went along and said, "yeah, he
21 did," correct?

22 MR. ART: Objection. That
23 mischaracterizes his testimony.

24 THE WITNESS: Like I said, Guevara

Transcript of Jose Melendez
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1 said "this is the guy that did it," you know.
2 And my friend just got shot. You know what
3 I'm saying? So, I mean, I fittin' in some
4 type of way.

5 BY MR. LEINENWEBER:

6 Q. And what way were you feeling?

7 A. I didn't care.

8 Q. You didn't care about what?

9 A. I didn't care about, you know, this dude being
10 locked up.

11 Q. Okay. You didn't care about Thomas Sierra
12 being locked up?

13 A. Yeah, you could put it like that.

14 Q. Okay.

15 A. I didn't care.

16 Q. But you knew at the time you were never going
17 to testify against him, right?

18 A. I mean, I don't know what I was gonna do.

19 Q. You ever testify against anybody?

20 A. No.

21 Q. Okay. It's bad thing to testify against
22 people, correct?

23 MR. ART: Objection. Relevance.

24 Form. Foundation.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 THE WITNESS: Is it bad? You tell
2 me is it bad.

3 BY MR. LEINENWEBER:

4 Q. I'm asking you.

5 A. No, but you tell me, since you're asking me.

6 Q. But I'm asking you the question.

7 A. Well, what do you think?

8 Q. See, this is the part where -- see,
9 unfortunately, our rules are different here.

10 Right? I have to ask you the questions. You
11 got to answer. Right?

12 A. I mean, I ain't -- I ain't gotta answer
13 nothing.

14 Q. No, you don't have to do anything.

15 A. Okay. But that's what I'm saying, you're
16 saying it's bad.

17 Q. Well, I'm just asking you if --

18 A. Is it bad?

19 Q. I'm asking you.

20 A. Is it bad? You tell me and, then, I'll tell
21 you.

22 Q. Is it bad -- is it bad to testify against
23 someone?

24 MR. ART: Objection. Relevance.

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1 Form. Foundation.

2 THE WITNESS: I don't -- I don't
3 know. You know what I'm saying?

4 BY MR. ART:

5 Q. Okay. Well, let me --

6 A. I ain't have to go testify on nobody, you
7 know.

8 Q. I'm sorry?

9 A. I said I don't know, you know. When I -- when
10 I went to court and then I told them, yeah, it
11 wasn't -- it wasn't --

12 Q. Yeah, you didn't want to testify against him,
13 right?

14 MR. ART: I object. That
15 mischaracterizes this witness's testimony.

16 BY MR. LEINENWEBER:

17 Q. You didn't want to testify against him,
18 correct?

19 A. I didn't want to testify against who?

20 Q. Against Thomas Sierra, correct?

21 A. I mean, why -- why should I go testify against
22 him if he ain't the guy that did it? You know
23 what I'm saying?

24 Q. Have you seen people commit crimes before?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 A. Have I seen people --

2 MR. ART: Objection.

3 THE WITNESS: -- commit crimes?

4 MR. LEINENWEBER: Yeah.

5 MR. ART: Relevance.

6 THE WITNESS: Oh, man, I'm not going
7 to answer that, man.

8 BY MR. LEINENWEBER:

9 Q. Why aren't you going to answer it?

10 A. Because it --

11 MR. ART: Same objection.

12 THE WITNESS: -- ain't got nothing
13 to do with this.

14 BY MR. LEINENWEBER:

15 Q. Of course, it has something --

16 A. No, it don't -- it don't got nothing to do
17 with this.

18 Q. If you -- I'm asking you, if you saw someone
19 commit a crime, you don't want to go testify
20 against that person?

21 A. If somebody commits a crime, that's they
22 business. I can't tell you --

23 Q. What if you're the witness to the crime?

24 MR. ART: I object --

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 THE WITNESS: I don't know what that
2 means.

3 MR. ART: -- to the relevance of --

4 MR. LEINENWEBER: You know what --

5 MR. ART: -- this question.

6 MR. LEINENWEBER: -- being a witness
7 to a crime is.

8 MR. ART: Am I allowed to make an
9 objection?

10 COURT REPORTER: I'm sorry.

11 Everyone is --

12 MR. ART: Yeah.

13 COURT REPORTER: -- talking all at
14 once. I can't get everyone.

15 MR. LEINENWEBER: I totally
16 apologize for --

17 MR. ART: I would like to be able to
18 object.

19 COURT REPORTER: Thank you.

20 MR. ART: And I apologize for
21 interrupting the conversation. I gotta be
22 able to make an objection.

23 COURT REPORTER: Well, I gotta be
24 able to write it.

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1 MR. ART: I hear ya'.

2 My objection --

3 COURT REPORTER: I don't think you
4 do.

5 MR. ART: -- is this line of
6 questioning is totally irrelevant and it
7 mischaracterizes what this witness has already
8 said.

9 MR. LEINENWEBER: And I apologize, I
10 should --

11 THE WITNESS: I'm going to get ready
12 to go if you all -- you know.

13 BY MR. LEINENWEBER:

14 Q. Are you going to refuse to answer any of my
15 questions?

16 A. No.

17 (All parties speaking at once.)

18 MR. ART: I think he --

19 THE WITNESS: I been answering your
20 questions.

21 MR. ART: You know, I'd like --

22 MR. KIVETZ: Stop. Stop.

23 THE WITNESS: I been -- you don't
24 tell me to stop.

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1 MR. KIVETZ: I'm talking to him.

2 MR. ART: To be perfectly clear,
3 this is harassing of the witness that's going
4 on. If you're trying to make him leave, then,
5 you know, the record will reflect that you've
6 been harassing him with these questions.

7 If you want to ask him about this
8 actual case, you know, whether he had a bias,
9 whether he had a reason to testify falsely, go
10 ahead and ask, but you're harassing him, and I
11 think you're trying to get him to leave.

12 MR. KIVETZ: I think you're trying
13 to coach him and help him right now.

14 MS. BARBER: Yeah.

15 MR. KIVETZ: So refrain from your
16 objections and comments.

17 THE WITNESS: I'm just telling you
18 what happened. You know, you's asking me
19 questions, and I'm answering them all.

20 MR. ART: Yeah, let's ask
21 questions --

22 THE WITNESS: You know, I just --

23 MR. ART: -- about this --

24 THE WITNESS: Just so you know, I

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1 don't -- I don't like the type of questions
2 he's asking me, period.

3 MR. KIVETZ: I get it. I get it.
4 But we do have to ask you some questions.

5 MR. ART: Right, but you --

6 THE WITNESS: I don't --

7 MR. ART: -- don't have to harass.

8 MR. KIVETZ: Stop it.

9 MR. ART: No.

10 MR. KIVETZ: No. You need to stop
11 it.

12 MR. ART: Don't tell me to stop
13 anything.

14 Hang on, Mr. Melendez.

15 Don't -- don't tell anyone to --

16 MR. KIVETZ: Let's take a break.

17 MR. ART: -- stop making an
18 objection.

19 MR. KIVETZ: We need to take a
20 break.

21 MR. ART: I'm asking you to stop --

22 MR. LEINENWEBER: Mr. Melendez, can
23 we take a five minute break?

24 MR. ART: No. No. No. No.

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Conducted on August 13, 2019

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1 I'm making a record.

2 THE WITNESS: I'm getting tired,
3 man.

4 MR. ART: Stop harassing the
5 witness. It's a ridiculous line of
6 questioning. Ask him about the case and let's
7 move on.

8 MR. KIVETZ: What you're doing is
9 unwarranted, Steve.

10 MR. LEINENWEBER: The only thing I
11 would object to is I don't believe my
12 questions were designed to harass the witness.
13 I don't believe I was harassing the witness.

14 MR. ART: All right. It had that
15 effect. Let's try to complete the deposition.

16 MR. LEINENWEBER: I agree. Let's
17 take a five minute break and see if we can
18 complete it.

19 (Brief pause.)

20 MR. ART: So we want to make a
21 standing objection to these lines of
22 questioning, which are completely irrelevant
23 to this witness's testimony in the case. We
24 think they're designed to harass him. We

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1 think defense counsel is trying to get this
2 witness to leave the room. We would
3 appreciate it if future questions are about
4 his knowledge of this actual case and not
5 these extraneous subjects. So that's our
6 standing objection.

7 MR. LEINENWEBER: Okay. And, again,
8 I just want to note for the record, I don't
9 believe I was attempting to harass the
10 witness. So I will move on.

11 MR. KIVETZ: And we disagree with
12 your objections, whole-heartedly. We actually
13 believe the opposite.

14 BY MR. LEINENWEBER:

15 Q. Mr. Melendez, I'm showing you Exhibit No. 2.
16 That's the police report that you were shown
17 previously. Is that correct?

18 A. Yeah.

19 Q. Okay. And I believe you stated that, in
20 response to Mr. Art's questions -- well, this
21 was the police report that was written about
22 your first encounter with the police. Okay?

23 A. (Witness nodding yes.)

24 Q. And if you go down to where it says

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1 "Narrative," see where I am? I know this is
2 kind of hard to read, so I'm going to stand up
3 and show you where I mean.

4 Like the little "Narrative," do you
5 see that?

6 A. This. (Gesturing.)

7 Q. Okay. I'm just going to read that to you.
8 Okay?

9 "In summary, ROs," that means
10 responding officers, "were flagged down by
11 witness Melendez at 2358 North Kedzie."

12 Again, I know it's 26 years ago or
13 something like that, does that sound correct,
14 that you flagged them down or you met the
15 police around there?

16 A. Well, they stopped me.

17 Q. Okay.

18 A. I was going -- like I said, I was trying to
19 get to the hospital.

20 Q. Okay.

21 A. And they came behind me and stopped me, and I
22 told them "I gotta get my friend to the
23 hospital."

24 Q. Okay. And then they called the ambulance for

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1 you at that point?

2 A. I mean, they stopped me. They didn't let me
3 keep going, so they just had me right there.

4 Q. Okay. And then it says, if you keep going on
5 the end of sentence one there: "Who related
6 that as he was driving around the statue where
7 Wrightwood and Kedzie came together when he
8 and his passengers were accosted by a dark
9 blue or black Park Avenue Buick (plates
10 unknown.)"

11 Correct, that's what you told them?

12 You said it was like a dark black or blue Park
13 Avenue, right?

14 A. I can't recall.

15 Q. Okay. But would it seem to -- do you have any
16 reason to disagree that this police report is
17 correct in terms of what you said to them at
18 that time?

19 A. I ain't -- I ain't flag nobody down.

20 Q. Okay. Other than that, though?

21 A. I mean, I don't know, man.

22 Q. I mean, I think, at the time Mr. Art had asked
23 you -- you were trying to help the police out,
24 right, because your friend had been shot?

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1 A. I was trying to -- I was trying to help who
2 out?

3 Q. At the time --

4 A. I was trying to get to the hospital.

5 Q. Okay. But after they took your friend away in
6 the ambulance, you spoke to the police,
7 correct?

8 A. I mean, they -- they -- they had me there.

9 They detained me there. They were trying to
10 ask questions.

11 Q. Right.

12 A. As far as, yeah, they -- they had me there.

13 Q. Okay. But at that time, were you trying to
14 give them the information, the truth?

15 A. I mean, I told them -- I told them it was a
16 black car, a black Buick. You know what I'm
17 saying?

18 Q. Okay.

19 A. That's why they --

20 Q. And you thought it might --

21 A. Huh?

22 Q. You thought it might have been like a Park
23 Avenue, is that correct?

24 A. I mean, I know my cars. You know what I'm

Transcript of Jose Melendez
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1 saying? So I knew it was a Buick because I --
2 Q. Right.
3 A. -- owned one.
4 Q. Right. And, actually, was your car a Buick?
5 A. No. My car was a Cutlas.
6 Q. A Cutlas?
7 A. Oldsmobile.
8 Q. Same type of model, right?
9 A. Nah.
10 Q. Is it -- is it similar -- similar --
11 A. My car --
12 Q. -- to a sedan?
13 A. My car was a two-door and his was a four-door.
14 Q. Okay. But you tried to give them the
15 information when they were talking to you,
16 correct?
17 A. I mean, I told them it was a black car.
18 Q. Okay. And you said "with spoke wheels and
19 tinted windows," correct? That's what it says
20 there?
21 A. It was rims. It had custom rims on it. And
22 it had -- I don't know what it says there, but
23 you know, it was a car with tint and custom
24 rims.

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1 Q. Okay.

2 A. I mean, if you want to say spoke wheels,
3 that's -- you're saying that.

4 Q. Okay. What are custom rims, can you explain
5 that?

6 A. I mean, customs rims, you go to the -- to the
7 rim store and you buy custom rims, you know,
8 they're not factory.

9 Q. Okay.

10 A. They're just to give your car a better look, I
11 guess, you know. Like the ones -- like the
12 rims I got on my car, those were like custom
13 rims, they're like spokes, you know.

14 Q. And so that's Exhibit No. 3 I'm showing you.
15 Those are custom rims right there?

16 A. Yeah. I mean, you buy those at the rim store.

17 Q. Okay. I'm going to direct you to take a look
18 at Exhibit -- Exhibit No. 5. Do you see that
19 there in the picture?

20 A. Yeah.

21 Q. Are those custom rims?

22 A. No. Those are factory rims.

23 Q. Okay. Are those different than what you have
24 on yours?

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1 A. Yeah, they're different.

2 Q. How are they different? To me, they look --

3 A. That's a hub cap, and this is a whole rim by
4 itself. (Gesturing.)

5 Q. Okay. So the difference between what you have
6 -- I mean, there's -- there's spikes on yours,
7 right?

8 A. Those are spokes, dirty spokes.

9 Q. Okay.

10 A. Yeah.

11 Q. Are they not spokes on No. 6 -- No. 5?

12 A. That's a hub cap.

13 Q. But are there spokes in the hub cap?

14 A. I mean, of course, there's spokes in the hub
15 cap. That's how they -- that's how they made.

16 Q. Okay. But you -- you'd say, looking at this
17 car -- and, again, that's No. 5, you'd say
18 those are spokes in the hub cap?

19 MR. ART: Objection.

20 Mischaracterizes the testimony.

21 THE WITNESS: Those are -- those are
22 hub caps. Those are factory hub caps. Spokes
23 are ones I got on my car.

24 MR. ART: And you're -- let the

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1 record reflect you're pointing to Exhibit 3.

2 BY MR. LEINENWEBER:

3 Q. And the custom rims, are those -- do you have
4 to go to a shop to have those taken off?

5 A. What you mean I have to take them off? No,
6 you could take them off yourself.

7 Q. Okay. You have to have like a socket wrench
8 to take them off, correct?

9 A. I mean, you could buy them and put them on
10 yourself. And, you know, when winter come,
11 you take them off and you put your regular
12 rims, I mean.

13 Q. It's a pretty simple thing to do?

14 A. I mean, you -- have you ever took a tire off?

15 Q. Yes.

16 A. Okay.

17 Q. So it's as simple -- it's as simple as taking
18 a tire off, taking a rim off?

19 A. I mean, I don't -- I don't -- I don't go to
20 nobody. I wasn't going to nobody to do my
21 work on my car. I do it myself.

22 Q. You could take that -- you could take the rims
23 off yourself?

24 MR. ART: Objection. Relevance.

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1 BY MR. LEINENWEBER:

2 Q. How long would that take?

3 A. I mean, I don't know. I don't know. It
4 depends. It depends how long I want it to
5 take.

6 Q. Okay. Well, if you wanted to do it quickly,
7 how long a time -- how quickly could you do
8 it?

9 A. I don't know. You gotta -- like I say, you
10 gotta lift the car up off all fours, you know.
11 It's gonna take you some time.

12 Q. But it's something that someone can do if
13 they've got a jack and a socket wrench,
14 correct?

15 A. I mean, if you got the tools, yeah.

16 Q. Anyone who knows how to take a tire off can
17 take a rim off?

18 A. Of course.

19 Q. So going back, at least until the -- the
20 actual shooting, so I think you stated that
21 you pull up to the stop sign. Is that
22 correct?

23 A. Yeah, I drive through the stop sign, correct.

24 Q. You didn't drive through it, you stopped?

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1 A. Yeah. You gotta stop.

2 Q. And at the time you stopped at the stop sign,
3 what street were you stopping at? What is
4 that street?

5 A. I was coming up Logan.

6 Q. So you stopped at the stop sign at Logan,
7 correct?

8 A. Yeah.

9 Q. And to your left, you saw the Buick, correct?

10 A. Yeah. Like I say, when I was going -- when I
11 was going up Logan, that car was already
12 there. He passed up the -- the stop sign and
13 I was coming to the stop sign.

14 Q. Okay.

15 A. Right.

16 Q. And I believe you stated before you weren't
17 sure like what time it was, you said, is that
18 correct?

19 A. It wasn't dark outside.

20 Q. Okay. And around that monument, it's really
21 well lit up, is that correct?

22 A. It what?

23 Q. It's really well lit up, right, that monument?

24 A. It wasn't -- it wasn't lit up. It was -- it

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1 wasn't nighttime, so it wasn't lit up with the
2 -- you know what I'm saying?

3 Q. Okay. So you had no -- basically, had no
4 problem seeing it? It wasn't dark out, right?

5 A. It wasn't that dark outside. It wasn't dark,
6 like -- like you look out here and it was
7 dark. (Gesturing to photo.)

8 Q. Right. Right. And as you -- you see that car
9 slow down, essentially, waiting for you,
10 right?

11 A. Excuse me?

12 Q. You saw that -- the other car, the dark car,
13 you saw it like slow down and wait for you,
14 correct?

15 A. Yeah, it was slowing down.

16 Q. Okay. And, again, we've already talked about
17 this, but that's when your senses -- your
18 spidey sense starts tingling, is that -- do
19 you know what I mean by that?

20 MR. ART: No. I object to that
21 gross mischaracterization of what this witness
22 has said.

23 THE WITNESS: I mean, I seen the car
24 like slow down, yeah. I seen it slow down.

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1 BY MR. LEINENWEBER:

2 Q. And when you saw it slow down, you -- you were
3 alerted, right?

4 A. I mean, I was wondering why he was slowing
5 down for.

6 Q. Okay. And why did you think he was slowing
7 down?

8 A. I mean, I don't know. I can't -- I can't tell
9 you why he was slowing down, but I noticed it.

10 Q. Okay. And did you think -- did you think he
11 might have been slowing down for like a bad
12 reason?

13 A. I can't tell you what -- I just -- like I say,
14 he slowed down.

15 Q. Okay. And so, then, what happened after he
16 slowed down?

17 A. Nah, I -- I mean, once -- once I -- I kept
18 going, you know, and he stood in front of me.

19 Q. Okay.

20 A. And he's like -- and I'm right here
21 (gesturing), and he's right up here
22 (gesturing.)

23 Q. And what you're doing with your hands is your
24 -- your left hand is a little bit in front of

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1 your right?

2 A. Yeah. He was a little -- he was a little bit
3 up front.

4 Q. So he's to your left, the car's to your left?

5 A. Yeah.

6 Q. And he's slightly in front of you, is that
7 right?

8 MR. ART: I object to the extent
9 that this --

10 THE WITNESS: I mean --

11 MR. ART: -- whole thing is asked
12 and answered. He's already explained it.

13 THE WITNESS: Yeah.

14 BY MR. LEINENWEBER:

15 Q. And how fast were you going at that time?

16 A. I can't tell you.

17 Q. And it's two lanes, right, two lanes? Your
18 cars are next to each other, each in its own
19 lane? Does that make sense?

20 A. I don't know. It could be more lanes. I'm
21 not sure. You know, I mean, I -- I -- I mean,
22 I ain't -- I ain't been there in a while, but
23 I mean, there's -- it's pretty wide, you know.

24 Q. Okay. And your cars were pretty close

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1 together, right?

2 A. I wanna say pretty close, but like I say, he's
3 a little -- he's slightly in front of me.

4 Q. Okay. And slightly in front of you, how many
5 feet are between the passenger door and your
6 door?

7 A. I can't -- I don't --

8 Q. Less than 6 feet, right?

9 A. I don't know. I can't remember.

10 Q. So you're driving. Do you eventually catch up
11 to each other?

12 A. I kinda -- I'm kinda gonna go around, you
13 know, trying just to go up Kedzie.

14 Q. And how fast are you going at this time?

15 A. I can't tell you that.

16 Q. Not fast?

17 A. I'm not looking at the speedometer.

18 Q. Okay. You didn't feel like you were speeding
19 at this point?

20 A. I wasn't speeding.

21 Q. Okay. So your cars begin to become even, is
22 that fair, at some point?

23 A. More or less.

24 Q. Okay. And you see -- you can see who's in

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1 that car, correct?

2 MR. ART: Object.

3 THE WITNESS: No. I can't see who's
4 in the car.

5 BY MR. LEINENWEBER:

6 Q. You can see there's people in the car?

7 A. There's people in the car, yeah.

8 Q. Okay. You can see two people in front and one
9 person in the back?

10 A. Yeah, you could say that.

11 Q. Okay. And the person in the back was an
12 African-American, is that correct?

13 A. Yeah, you could say he's black.

14 Q. And the two people in front were Hispanic,
15 Latino, correct?

16 A. Yeah, Latino.

17 Q. You could tell they were all men?

18 A. Yeah.

19 Q. Okay. And at some point, the passenger starts
20 flashing gang signs to you, correct?

21 A. He just -- like I say, he just put up the "C"
22 on the window.

23 Q. And what did the "C" mean?

24 MR. ART: Objection. Asked and

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1 answered.

2 THE WITNESS: I already told you. I
3 mean, I already told you what it is. It's
4 Spanish Cobras.

5 BY MR. LEINENWEBER:

6 Q. Okay. When that happened, what did you do?

7 MR. ART: Objection. Asked and
8 answered.

9 THE WITNESS: I didn't do nothing.

10 I mean, what can I do? I just -- I was just
11 driving.

12 BY MR. LEINENWEBER:

13 Q. Okay. And at some point, did you say
14 something to the guys in the car as you passed
15 them?

16 A. I didn't need --

17 MR. ART: Objection.

18 THE WITNESS: -- to say --

19 MR. ART: Asked and answered.

20 THE WITNESS: I didn't say nothing
21 to them. I had no reason to say nothing.

22 BY MR. LEINENWEBER:

23 Q. Did they say anything to you?

24 A. No. We didn't exchange words, if that's what

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1 you mean. We weren't talking to each other.

2 Q. Okay. After you saw the passenger flash the
3 gang sign -- strike that.

4 When you -- when you saw him flash
5 the gang sign, where were you in relation to
6 him?

7 MR. ART: Objection. Asked and
8 answered.

9 BY MR. LEINENWEBER:

10 Q. Was he in front of you, was he behind you, or
11 was he next to you?

12 A. I mean, like I say, he's still a little bit up
13 in front of me. (Gesturing.)

14 Q. So he's at an angle to you, is that right?

15 A. I mean, like, he was slightly in front of me.
16 Like, you know, he was in front of me, but
17 enough for me to see, you know, that when he
18 flipped his hand to the window, I -- I already
19 know who he is.

20 Q. Was he sort of like I am to you now? I'm
21 slightly in front of where you're sitting.

22 A. Nah. Nah.

23 Q. Okay. Where was he?

24 A. I mean, he might have been up more, you know,

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1 and I can't tell you because, you know, it's
2 just I'm driving, you know. You know, I can't
3 tell you how far we were, none of that,
4 because, you know, I'm just telling you more
5 or less what -- what I can recall.

6 Q. Okay. But your cars were pretty close
7 together at some point, right?

8 MR. ART: Objection. Asked and
9 answered.

10 THE WITNESS: I don't know. I can't
11 tell you pretty close, you know, because like
12 I said, it's pretty wide, you know.

13 | BY MR. LEINENWEBER:

14 Q. Okay. And when you -- after you saw the gang
15 sign, what did -- what did you see them do?

16 MR. ART: Objection. Asked and
17 answered.

18 THE WITNESS: I didn't see them
19 doing nothing else.

20 BY MR. LETENWEEBER:

Q. You didn't see them do anything else?

22 A. No.

23 Q. And you noticed that the windows were tinted,
24 correct?

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1 A. Yeah.

2 Q. Okay. But you could still see things inside
3 the car, correct?

4 A. Yeah. You could see shapes. I mean, you
5 could see the shape of somebody in the car.

6 Q. Okay. So the way you would describe the tint,
7 you wouldn't describe that as dark, correct?

8 A. A dark tint, a tint.

9 Q. Well, you recall that -- I think you stated
10 before, you've been deposed before about this,
11 is that correct, that somebody took another
12 deposition like this of you?

13 A. Yeah.

14 Q. And that deposition took place on June 30th,
15 2014. Does that sound correct?

16 A. I can't recall.

17 Q. And that was at the Boone County Jail, is that
18 right?

19 A. I can't recall that either.

20 Q. Do you recall being asked this question,
21 giving this answer, it's at page 75.

22 MR. ART: What line?

23 MR. LEINENWEBER: Ten.

24 BY MR. LEINENWEBER:

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1 Q. "And could you tell if the tints were pretty
2 light on the window?"

3 A. No, they weren't light.

4 Q. You know, what I have to do is, it seems a
5 little crazy, I have to read you this, your
6 question and the answer, and then see if you
7 -- if that's what you said. Okay? So just
8 give me one second and then I'll ask you to
9 answer.

10 "Question: And you could tell the
11 tints were pretty light on the windows?

12 "Answer: I didn't say they were
13 pretty light. I didn't say -- I didn't say
14 they were pretty dark either. So they, you
15 know, they had tints, you know."

16 Do you remember giving that -- being
17 asked that question and giving that answer?

18 A. I can't recall, but I can tell you the tints
19 weren't light.

20 Q. Okay. But they weren't dark either, right?

21 A. I mean, they got -- at the time, they got a
22 regulation on the tints. So, I mean, you
23 know, you get them too dark, you get -- got a
24 ticket. You know what I mean? I mean, like I

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1 can't -- like I say, they were just enough for
2 me to see that there was somebody in the car.
3 I noticed them.

4 Q. And, incidentally, like tints on windows,
5 those, typically, don't come from a factory,
6 correct?

7 A. No.

8 Q. Those have to be put on, right?

9 A. Yeah.

10 Q. Okay. And a mechanic can put those on, is
11 that correct?

12 A. No. Usually, you go up to a shop and get them
13 done.

14 Q. Okay. But if you know what you're doing, you
15 could put those tints on yourself, correct?

16 A. I mean, they sell them in the stores.

17 Q. Okay. They sell them in the stores for people
18 to put them on themselves?

19 A. Yeah, if they wanted to, I guess.

20 Q. Did you know anybody that put them on
21 themselves?

22 A. No.

23 Q. But you can take them off yourself, too,
24 correct?

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1 A. I mean, you can probably take them off
2 yourself, yeah.

3 Q. So at that time, you could tell that that car
4 was a Buick, though, correct?

5 A. Yeah.

6 Q. Because you said you knew about cars?

7 A. Yeah. I owned a Buick before.

8 Q. And so you could tell -- and you thought that
9 the car was -- was a dark color, correct?

10 A. It was a black.

11 Q. And at some point, at this point when the cars
12 were getting near each other, you could see
13 the driver of the car, correct?

14 A. I can't see the driver. I could see somebody
15 is driving. Somebody was in the car. Like I
16 said, three people in the car.

17 Q. Okay. At some point, the passenger began to
18 open up the passenger door, correct?

19 MR. ART: Objection. Asked and
20 answered.

21 THE WITNESS: Yeah.

22 BY MR. LEINENWEBER:

23 Q. And you could see him, he was using his leg to
24 open the door, right?

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1 A. He didn't use his leg to open the door. He
2 opened the door. When he went to open the
3 door, I threw the car at the door so he could
4 shut it back.

5 Q. Okay.

6 A. And when I was turned away, that's when I seen
7 the leg come out and hold the door open.

8 Q. What did you see the driver doing at that
9 time? Did you see him like messing with the
10 door panel?

11 A. I mean, he could have been. I mean, they were
12 talking. I mean, I don't -- you know, I don't
13 know what -- it's been a long time, man. You
14 know what I'm saying?

15 Q. No, I hear you. It's been a long time.

16 A. You know, but he could have. He could have
17 been.

18 Q. Okay. And, I'm sorry, did you say you did not
19 see the passenger open the door with his leg?

20 A. He didn't open it with his leg.

21 Q. Okay. I'm going to ask you about your
22 deposition a few years ago, again.

23 Steve, I'm on page 81, line 3.

24 "What -- what did you see the driver

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1 do? Just describe it.

2 "Answer: He was messing with his
3 door panel, some -- the best of what I could
4 see. That's what I would see, like. And as
5 we're going, us know, I just had a feeling
6 about what was going on. And when dude opened
7 the door, I think he was going to -- like he
8 was trying to pull something out. He opened
9 the door with his leg and I threw my car at it
10 because I had a bad feeling. So he closed the
11 door and I tried to -- I tried to -- I tried
12 to go toward -- I, actually, went toward
13 Wrightwood and there, after all that, all I
14 heard was a bunch of gun shots."

15 Were you asked that question and did
16 you give that answer?

17 A. I mean, he could have been messing with his
18 door panel, yeah.

19 Q. Okay.

20 A. As far as the dude opening the door with his
21 leg, who opens the door with their leg? You
22 know --

23 Q. I'm just asking.

24 A. -- like I said, the first time he opened the

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1 door, I threw my car at it and he shut it.

2 Q. Okay.

3 A. The second time, the door flew open and I seen
4 a leg holding the door open while he was
5 shooting.

6 Q. Okay. But do you have any reason to disagree
7 with that question that was asked of you five
8 years ago and that was your answer?

9 MR. ART: Objection. Asked and
10 answered.

14 BY MR. LEINENWEBER:

15 Q. Okay. And, again, you threw the door -- you
16 threw your car at him, right, you swerved your
17 car towards him?

18 A. Yeah. I swerved my car at him.

19 Q. And how close did your car come to his?

20 A. Close, very close, enough that he had to shut
21 it.

22 Q. Okay. When you say "real close," can you -- I
23 know it's a long time ago and I know it's a
24 silly question. Can you estimate how close it

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1 was?

2 MR. ART: Object to the silly
3 question.

4 THE WITNESS: I mean, if he wouldn't
5 have shut the door, I would have hit him,
6 period.

7 BY MR. LEINENWEBER:

8 Q. Okay. So he shut the door and that's when you
9 went off towards Wrightwood?

10 A. Yeah. And I shot to the right, to Wrightwood.

11 Q. Okay. And when you saw him open the door, he
12 had something in his hands, right?

13 A. I don't know. I can't tell you I saw
14 something in his hands. All I heard was
15 shots.

16 MR. LEINENWEBER: Okay. We'll go to
17 page 90, Steve.

18 Q. Okay. I'm going to ask you whether you were
19 asked this question and gave this answer.

20 "And did you see the person in the
21 front passenger seat in the car to your left
22 stick anything out the door at this point or
23 did you just see the door open?

24 "Answer: I seen the door open and

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1 that's when I seen something in his hand. So
2 I, you know -- and that's when I threw down
3 the car and so he could shut the door. Once
4 he shut the door, that's when I went west on
5 Wrightwood. Okay.

6 "Question: So you actually saw
7 something in his hand when he opened the door
8 the first time?

9 "Answer: Yes."

10 MR. ART: I just object because it's
11 not a complete chain. I think you're --

12 THE WITNESS: I didn't --

13 MR. ART: -- talking about two
14 different times.

15 THE WITNESS: When he first opened
16 his door, I didn't see nothing in his hand. I
17 just -- I just thought he was going to do
18 something, so I threw the car at him. As far
19 as me seeing something in his hand, I didn't
20 see nothing in his hand.

21 BY MR. LEINENWEBER:

22 Q. So, again, the same question, do you disagree
23 that this question was asked and that was the
24 answer you gave five years ago?

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1 A. I mean, I can't recall, man.

2 Q. And -- and the tint wasn't so dark that you
3 could not see what was going on in the car,
4 correct? You could see something?

5 MR. ART: Objection. Asked and
6 answered.

7 THE WITNESS: It was pretty dark.

8 It was dark, but it wasn't dark-dark, you
9 know. Like I said, you could see -- you could
10 see shapes inside the car. You know what I'm
11 saying?

12 BY MR. LEINENWEBER:

13 Q. And you could see movement, what was going on
14 in the car?

15 A. Well, you could --

16 MR. ART: Objection. Asked and
17 answered.

18 THE WITNESS: -- see people moving
19 around, but like I said, I can't tell you what
20 was going on in the car, man, you know.

21 BY MR. LEINENWEBER:

22 Q. And I may have just asked you this question
23 before, but did you think that was a gun that
24 he had in his hand?

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Conducted on August 13, 2019

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1 A. Did I think? I can't tell you what I think.
2 I mean, I just seen him open the door and, you
3 know, my instinct just told me to throw the
4 car at it, you know.

5 Q. Okay.

6 A. That's it.

7 Q. I'm just going to ask you a question from the
8 deposition before.

9 MR. LEINENWEBER: Steve, this at the
10 bottom of page 90.

11 MR. ART: Ninety?

12 MR. LEINENWEBER: Yes, last line.

13 BY MR. LEINENWEBER:

14 Q. "Question: What did you see in his hand?
15 "Answer: Oh, to me, I took it to be
16 a gun. That's, you know, that's when I threw
17 the car -- the car at him so we could lock the
18 door, and I tried to take off going west on
19 Wrightwood, and that's -- when I went towards
20 Wrightwood, that's when I just started hearing
21 gun shots."

22 MR. ART: Objection. Not
23 impeaching.

24 BY MR. LEINENWEBER:

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Conducted on August 13, 2019

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1 Q. Was that the question -- do you remember
2 getting that question and giving that answer?

3 A. I mean, I don't -- I don't know. I can't
4 remember all that. Like I said, that's a long
5 time ago. And like I said, I didn't -- so as
6 he opened the door, you know, the only thing
7 was to throw my car at him. You know what I'm
8 saying? That was it. You know, as far as
9 whatever he had in his hand, I mean, I can't
10 tell you.

11 Q. So does that -- that refresh your recollection
12 as to whether you saw a gun?

13 A. I don't know. I can't tell you if he had a
14 gun or not.

15 Q. And is it correct that you saw the gun in his
16 right hand, the passenger?

17 MR. ART: Objection. Form.

18 THE WITNESS: I wasn't -- I wasn't
19 looking to see if nobody had anything. I was
20 just trying to get away from the gun fire.

21 MR. LEINENWEBER: Okay. Steve, I'm
22 going to ask on page 93, line 6.

23 MR. ART: Objection. Improper
24 impeachment.

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Conducted on August 13, 2019

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1 BY MR. LEINENWEBER:

2 Q. "And which hand did you see the gun in when he
3 opened the door the first time?

4 "Answer: I believe it was in his
5 right hand."

6 Did you -- were you asked that
7 question and did you give that answer?

8 A. I can't recall.

9 Q. It does not refresh your recollection?

10 A. No. Like I say, I wasn't looking to see what
11 anybody was doing. Once I heard the shot, I
12 just shot off, you know, I was trying to get
13 away. I wasn't looking back to look at
14 nobody. I wasn't -- you know, I was just
15 trying to get my friend, you know, away from
16 that.

17 Q. But you, actually, saw him point the gun at
18 you, correct?

19 A. I can't say. I don't remember either. You
20 know, I wasn't looking at him. You know, I'm
21 not going to sit there and look at him, that's
22 when you get shot in the face, it's something
23 you don't try and look at somebody. You know
24 what I'm saying?

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1 MR. LEINENWEBER: Steve, I'm going
2 to go to page 93, line 9.

3 BY MR. LEINENWEBER:

4 Q. Did you give this -- were you asked this
5 question and did you give this answer:

6 "Question: Did he actually point
7 the gun at you at this time, before you threw
8 your car at his car -- threw your car at his
9 car?

10 "Answer: Yeah. When he opened the
11 door, he pointed. Whatever he got in his
12 hand, he pointed it. And that's when I threw
13 the car at him real quick and I went west on
14 Wrightwood."

15 Do you remember being asked that
16 question and giving that answer?

17 MR. ART: Objection. Not
18 impeaching --

19 THE WITNESS: I remember him --

20 MR. ART: -- him properly.

21 THE WITNESS: -- opening the door
22 and me throwing the car at him.

23 BY MR. LEINENWEBER:

24 Q. When you were first -- when you were -- when

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1 you met with the police -- or when you were
2 stopped by the police on the way to the
3 hospital, you spoke to them, correct, at some
4 point?

5 A. I mean, they stopped me and asked me
6 questions.

7 Q. Okay. And you don't remember if you told them
8 you could identify the shooter, correct?

9 A. That I couldn't identify the -- I never seen
10 the shooter, why would I tell them I could
11 identify him?

12 Q. So you recall that you couldn't identify him
13 at the time?

14 A. I mean, I wasn't --

15 MR. ART: Objection.

16 THE WITNESS: -- even looking at
17 nobody.

18 MR. ART: Mischaracterizes --

19 THE WITNESS: Like I say, I was

getting shot at. I'm trying to get away. I'm
not looking at nobody. You know what I'm
saying?

23 BY MR. LEINENWEBER:

24 Q. No, but my question was, at that -- at that

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1 time, you don't recall if you told them that
2 or not?

3 A. Yeah, at that time. Like I said, man, this
4 has been a long time ago. I can't recall a
5 lot of that stuff that went on at that time.
6 You know what I'm saying? That's why -- you
7 know, you trying to ask me something that --
8 that you say you got there. I don't know. I
9 mean, I can't tell you. You know, I don't
10 write that.

11 Q. You never told the police, though, you
12 couldn't identify him, correct?

13 MR. ART: Objection. Asked and
14 answered.

15 THE WITNESS: I don't -- like I
16 said, I -- I didn't see no faces. I can't --
17 how am I going to identify somebody that I
18 can't even see? You know what I'm saying?

19 BY MR. LEINENWEBER:

20 Q. Well, my question's different. You never told
21 the police that you couldn't identify him,
22 correct?

23 MR. ART: Objection.

24 Mischaracterizes his testimony.

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Conducted on August 13, 2019

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1 THE WITNESS: Why would I tell them
2 I could identify him when I didn't see his
3 face?

4 MR. LEINENWEBER: Just give me a
5 minute.

6 BY MR. LEINENWEBER:

7 Q. Mr. Melendez, you were never arrested by
8 Detective Guevara, is that correct?

9 MR. ART: Objection. That's not his
10 name.

11 MR. LEINENWEBER: I'm sorry. I
12 apologize.

13 BY MR. LEINENWEBER:

14 Q. Mr. Melendez, you were never arrested by
15 Detective Guevara, correct?

16 A. I can't -- I don't know. I can't -- I mean, I
17 don't know if he ever arrested me or not. I
18 don't know.

19 Q. And, obviously, you've been arrested a lot of
20 times in your life, correct?

21 A. Like I said, I can't remember everybody that
22 arrested me.

23 Q. Okay.

24 MR. ART: I object to relevance.

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1 BY MR. LEINENWEBER:

2 Q. So as you sit here today, as you said, you
3 can't remember if he ever arrested you,
4 correct?

5 A. I mean, he could have. I don't know. I mean,
6 that's something you have to look and find.

7 Q. Okay. And the case that you're here on, in
8 prison --

9 A. Yeah.

10 Q. -- this was a federal case?

11 A. Yeah.

12 Q. And it was something, a heroin distribution or
13 something like that?

14 MR. ART: Objection. Relevance.

15 THE WITNESS: Yeah.

16 BY MR. LEINENWEBER:

17 Q. And so that had nothing to do with the Chicago
18 Police Department?

19 MR. ART: Objection.

20 THE WITNESS: I don't think so.

21 BY MR. LEINENWEBER:

22 Q. And you were never -- you've never been
23 physically abused when you were arrested by a
24 Chicago police, correct?

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1 A. I mean, you got your little moments. You know
2 what I'm saying? But, nah, I mean, as far as
3 this day that went on here, no.

4 Q. No, but I mean other times.

5 A. I mean, man, I gotta tell you, man, a lot of
6 them people were dirty, man. You know, I got
7 locked up for a -- for a -- for a case that I
8 didn't even do. So, you know, I mean, as far
9 as, you know, I can't tell you what they do
10 behind closed doors, man.

11 Q. What case did you got locked up that you
12 didn't have anything to do with?

13 A. Well, I mean, I got locked up afterwards, man.
14 After all that, I got a case put on me, on
15 this Kaboom case.

16 Q. And the Kaboom case you're referring to, that
17 was a murder outside the Kaboom --

18 A. Yeah.

19 Q. -- Nightclub, is that correct?

20 MR. ART: Can I have a standing
21 objection to relevance --

22 MR. LEINENWEBER: Yeah.

23 MR. ART: -- for all other arrests
24 and other --

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1 MR. LEINENWEBER: Totally.

2 MR. ART: -- alleged crimes?

3 BY MR. LEINENWEBER:

4 Q. In fact, at the time you testified in the
5 Sierra trial, you were -- you were in Cook
6 County Jail for that murder charge, correct?

7 A. Yeah.

8 Q. You were awaiting your trial?

9 A. Yeah.

10 Q. Okay. And so you were in Cook County Jail at
11 the same time as Thomas Sierra was, correct?

12 MR. ART: Objection. Foundation.

13 THE WITNESS: I was locked up for a
14 murder they say I did. Yeah, I was locked up.

15 BY MR. LEINENWEBER:

16 Q. But my question was, you were -- so you were
17 locked up in Cook County Jail waiting for your
18 trial, right?

19 A. Yeah. I was in Cook County jail.

20 Q. And at the time you were in Cook County Jail,
21 you testified against Thomas Sierra -- or,
22 excuse me. Strike that.

23 At the time you were in Cook County
24 Jail, you testified at the trial of Thomas

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Conducted on August 13, 2019

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1 Sierra?

2 A. Well, they took me there.

3 Q. And Mr. Sierra was in the Cook County Jail at
4 the same time?

5 MR. ART: Objection. Foundation.

6 THE WITNESS: I don't know.

7 MR. LEINENWEBER: Just one second.

8 MR. ART: Do you want to go off for
9 a minute?

10 MR. LEINENWEBER: Yes. Let's go
11 off.

12 MR. ART: Okay.

13 (Brief pause.)

14 BY MR. LEINENWEBER:

15 Q. Mr. Melendez, at some point, you were at the
16 police station and you looked through photo
17 books of gang members, correct?

18 MR. ART: Objection. Asked and
19 answered.

20 THE WITNESS: I can't recall.

21 BY MR. LEINENWEBER:

22 Q. And I'm going to direct you to page 117 of the
23 dep, at line 5.

24 Were you asked this question and did

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1 you give this answer: "Okay. Now, after
2 speaking with the police that night in the
3 interview room, were you also shown photo
4 books containing pictures of gang members,
5 correct?

6 "Answer: Yeah, I believe I was."
7 MR. ART: Objection. That's not
8 quite correct.

9 COURT REPORTER: I'm sorry?

10 BY MR. LEINENWEBER:

11 Q. Did you -- were you asked that question and
12 did you give that answer at that deposition
13 five years ago?

14 MR. ART: Objection. Not
15 impeaching.

16 THE WITNESS: I can't recall.

17 BY MR. LEINENWEBER:

18 Q. So as you sit here today, you can't recall
19 looking at any -- any gang photo books?

20 MR. ART: Asked and answered.

21 THE WITNESS: That's why -- I can't
22 recall looking at a photo book. I just
23 remember photos that Guevara showed me at that
24 one time. That was it, you know. I can't

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1 recall, you know, if I -- I probably did. I
2 don't know. You know what I'm saying?

3 BY MR. LEINENWEBER:

4 Q. Yeah. I mean, it was a long time ago,
5 correct?

6 A. Yeah.

7 Q. And it was like a stressful, horrible time in
8 your life, correct?

9 A. Of course.

10 Q. And you can't be expected to remember
11 absolutely everything that happened that
12 night, correct?

13 A. I mean, it's been a -- it's been a long time
14 ago.

15 Q. But I guess the question -- my question is is
16 that if you said you looked at photo books
17 five years ago, when you were asked about it,
18 you probably looked at photo books back then,
19 correct?

20 A. Five years ago?

21 Q. You were deposed five years ago, right, the
22 same type of thing we're doing here. Do you
23 remember that?

24 A. Well, I don't -- I don't remember looking. I

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1 mean, like I said, I can't recall, man, you
2 know.

3 Q. But my question is not whether you can recall.
4 My question was that if you said this five
5 years ago, if you said, "yeah, I looked at a
6 bunch of gang books," you probably looked at a
7 bunch of gang books?

8 A. I probably did, yeah.

9 Q. And the reason you looked at gang books is the
10 police wanted you to see if you could identify
11 the shooter, correct, because you saw the
12 shooter's face in the window, correct?

13 MR. ART: Objection.

14 THE WITNESS: I saw the shooter's
15 face?

16 BY MR. LEINENWEBER:

17 Q. You saw the shooter's face?

18 MR. ART: Objection.

19 THE WITNESS: I didn't see --

20 MR. ART: Mischaracterizes his --

21 THE WITNESS: I didn't see no
22 shooter's face. I been telling you this, I
23 ain't seen -- I ain't seen nobody's face.

24 BY MR. LEINENWEBER:

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1 Q. You're driving next to a guy who points a gun
2 at you, correct?

3 A. You're saying that, not me.

4 Q. You're --

5 A. You're saying that.

6 Q. You're driving -- you're driving next to a guy
7 who pulls a gun out, right? That's what
8 happened.

9 A. I don't know. You tell me. I mean, you're --
10 you're saying that. I already told you what I
11 was doing that day, that's what I was --

12 Q. And when that happened, when that happened,
13 you saw the gun in his right hand, you saw his
14 face, correct?

15 A. Okay. Look, I don't want to be disrespectful,
16 but I think I already answered a number of
17 your questions --

18 Q. Sir --

19 A. -- and, now, I'm getting ready to leave here.

20 Q. -- you understand --

21 A. And I'm not refusing to answer your questions.
22 I answered all the questions I could for you,
23 and you're sitting here trying to put words in
24 my mouth, and I'm ready to go.

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1 Q. Sir, sir, if I could just say to you,
2 Mr. Melendez, you're under a court order to
3 answer these questions.
4 A. I'm ready to go back.
5 Q. Sir, you could be held in contempt of court
6 for not answering the question.
7 A. I already answered all your questions.
8 Q. No, I'm --
9 A. I already answered your questions.
10 Q. Sir --
11 A. You're trying to put stuff in my mouth --
12 Q. Sir --
13 A. -- and I'm done.
14 Q. Sir, you're walking away from the table,
15 you're 20 feet from me now, you've asked the
16 guard to let you --
17 A. Like I told you, I've answered your questions.
18 Q. Sir, you're not answering --
19 (All parties speaking at once.)
20 MR. ART: Well, so, I object to the
21 question.
22 THE WITNESS: I don't like you
23 sitting there insinuating things, trying to
24 tell me what I said. And what I said -- and I

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1 ain't never said I seen anybody. I never
2 said --

3 MR. ART: Right.

4 THE WITNESS: I ain't never identify
5 nobody. So, you know, you're saying that.

6 MR. ART: I think that's the
7 problem.

8 MR. LEINENWEBER: Sir, you're free
9 to answer the question any way you like.

10 THE WITNESS: And I answered. How
11 many questions have I answered for you? I've
12 been answering your questions that you've been
13 asking me, and I've been answering them.

14 MR. LEINENWEBER: Sir, the
15 question --

16 THE WITNESS: You know, and I don't
17 like the way you going about it now, and I'm
18 ready to leave.

19 MR. LEINENWEBER: And I understand
20 that and respect you don't like the way I've
21 gone about it.

22 THE WITNESS: But, now, if I don't
23 answer the question, you talking about trying
24 to hold me in contempt of court. I been here

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1 two and a half hours already. You know what
2 I'm saying?

3 BY MR. LEINENWEBER:

4 Q. I'm telling you that you're under court order,
5 and the court order allows us to ask
6 questions until such time --

7 A. And I already answered them. I'm answering
8 the questions.

16 MR. ART: Let me say something,
17 Mr. Melendez. I think the problem is that you
18 told him you saw the shooter's face, when he's
19 told us, at least a dozen times, that that
20 didn't happen.

21 MR. LEINENWEBER: Steve, we
22 understand. This is possible trial testimony.
23 Cross-examination. You and I know -- we know
24 what's going on.

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1 MR. SWAMINATHAN: Mr. Melendez,
2 let's do this, because I'm worried that -- I
3 know you want to be done today. You don't
4 want to have to go through this.

5 THE WITNESS: I've been here since
6 7:30.

7 MR. SWAMINATHAN: I understand. And
8 I know you do not want to have to do this
9 again, relive this again. I understand that.

10 MR. LEINENWEBER: Can you give us
11 two minutes --

12 MR. SWAMINATHAN: Are you able to
13 say that, on this topic, you have literally a
14 couple questions left? I mean, I understand
15 what you're trying to do here. I cannot
16 imagine you coming back to this for another
17 five, ten questions.

18 MR. LEINENWEBER: I'm not, but the
19 questions -- you know what I'm doing, I'm
20 cross-examining him and --

21 MR. KIVETZ: We're allowed to do
22 that. We're permitted to do that --

23 MR. ART: Yeah. So I hear what
24 you're saying.

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1 MR. KIVETZ: You're withholding us
2 the opportunity to --

3 MR. ART: So, look, they're gonna --
4 look, they're gonna ask you some questions in
5 cross-examination that you're free to answer
6 -- when he says you're free to answer it how
7 you want, if it's not true, say it's not true;
8 if it is true, say it is true.

9 THE WITNESS: Well, I'm saying he
10 can't ask me and it's not true.

11 MR. ART: But, like, here's --
12 here's the bottom line, though --

13 THE WITNESS: I mean, why he even
14 asking me that if I already told you all a
15 bunch of times that I didn't see the dude's
16 face?

17 MR. ART: Here's the -- right. I
18 hear what you're saying. The problem for us
19 is a court can tell us all to come back here
20 and sit in this room, and no one wants to do
21 that, and especially you.

22 THE WITNESS: I mean, like --

23 MR. ART: So let's finish it and,
24 then, we'll be done.

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1 THE WITNESS: Well, I'm saying that
2 you need to hurry up because --

3 MR. ART: Okay.

4 THE WITNESS: -- I'm tired already.
5 I been here two and a half hours already.

6 MR. LEINENWEBER: I mean no
7 disrespect by these questions and --

8 THE WITNESS: Well, I mean, you're
9 sitting here telling me what I seen and what I
10 didn't see. You know what I'm saying? You
11 weren't there. I was there.

12 MR. LEINENWEBER: I understand.

13 THE WITNESS: You know what I'm
14 saying? You didn't lose a friend. I lost a
15 friend.

16 MR. LEINENWEBER: I know.

17 THE WITNESS: Okay. Then, so why
18 you even trying to sit up here and tell me
19 what I seen and what I didn't see?

20 MR. LEINENWEBER: I'm not trying to.
21 I'm asking you questions and you are free, as
22 Mr. Art said --

23 THE WITNESS: And like I say,
24 they're the same question you asked me, he

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1 asked me, and you asked me, and I told you the
2 same thing.

3 MR. KIVETZ: How about can we do
4 this, can I ask a couple questions? Can I ask
5 you a couple questions?

6 THE WITNESS: Like, I'm getting
7 tired already. That's what I'm trying to tell
8 you. I'm ready to go.

9 MR. KIVETZ: Just hear me out for
10 one second. I haven't talked at all. Right?

11 Mr. Melendez --

12 MR. LEINENWEBER: Mr. Melendez, I'm
13 fin --

14 MS. BARBER: Well, I think, are you
15 saying --

16 MR. KIVETZ: No. No. I want to ask
17 a couple questions separate from him, and then
18 he can go back to -- we can talk about him
19 going back. Let me just ask a couple
20 questions before you get up.

21 MR. ART: And let's finish this
22 thing off.

23 (All parties speaking at once.)

24 THE WITNESS: I need you all to

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1 hurry because I'm ready to go. I'm not trying
2 to disrespect you all or nothing, I'm trying
3 -- you know, I'm tired, man.

4 MR. KIVETZ: I hear you. I hear
5 you.

6 THE WITNESS: You know what I'm
7 saying? This --

8 MR. KIVETZ: Your -- you -- I get
9 that it's been a long time --

10 THE WITNESS: Like I tell -- I'll
11 tell all of you, this happened 20 some years
12 ago, and I'm not trying to -- you know, I'm
13 trying --

14 MR. ART: Relive it all the time.

15 THE WITNESS: -- to get past all that
16 already, you know?

17 MR. KIVETZ: We appreciate that.

18 THE WITNESS: And I was young at the
19 time. I'm older now. I'm not trying to go
20 back to this stuff. I'm not trying to
21 remember none of the stuff I did. You know, I
22 got problems. You know what I'm saying? I'm
23 trying to do my bit, and this is -- this is
24 kind of, you know, upsetting me. You know

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1 what I'm saying?

2 MR. KIVETZ: I understand this is
3 upsetting, 100 percent.

4 THE WITNESS: Well, then, let's get
5 this over with. Get your questions in --

6 MR. KIVETZ: All right.

7 THE WITNESS: -- and get outta here.

8 EXAMINATION

9 BY MR. KIVETZ:

10 Q. Some of them might seem a little repetitive.

11 It's just -- I mean, answer some of my
12 questions, because I want to tell you, the
13 court says we have seven hours to talk. Okay?
14 Seven hours. We've only been through --

15 A. Well, I -- I mean, if I don't want to be here,
16 I don't want to be here.

17 Q. When is the last time that you've spoken about
18 this case prior to today?

19 A. I mean, I don't talk about this case.

20 Q. Did any attorneys talk to you before coming to
21 here and sitting for your deposition today?

22 A. They told me they were going to give me a
23 deposition, you know, and some lawyers were
24 going to come talk to me. I guess it was you,

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1 and you are here.

2 Q. Did you talk to anybody on the phone, any
3 attorney at this table, for instance?

4 A. I mean, they told -- they told me that you
5 were coming to do a deposition because it was
6 court ordered, and I mean I got -- I got a
7 paper through the sheriff and, you know, so
8 here you are.

9 Q. So you talked to Steve Art and Anand on the
10 phone before we got here, is that correct?

11 A. They told me -- they told me they gotta do a
12 deposition. And I -- just like I told -- I
13 didn't even want to do it. I didn't want to
14 do no deposition with nobody.

15 Q. How long did you talk with the attorneys,
16 Steve Art and --

17 A. I don't know. I don't -- I mean -- I mean,
18 ask the staff how long I talked to them.

19 Q. Was it less than 30 minutes?

20 A. Yeah, way less than 30 minutes.

21 Q. What did you guys talk about, generally?

22 A. I didn't talk about nothing. I mean, like I
23 said, I didn't -- like, I don't even want to
24 be here right now.

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1 Q. I know. Did they show you --
2 A. You know, but you people --
3 Q. -- any documents?
4 A. -- with this contempt court thing, you know,
5 oh, we're gonna hold you in contempt.
6 Q. I can't -- I don't have the power to do that.
7 A. You know what I'm saying?
8 Q. Yeah. I don't have the power --
9 A. Okay.
10 Q. -- that's what I'm trying to tell you.
11 A. But that's what I'm saying, that -- that --
12 Q. You guys are saying the same thing about it.
13 We're just trying to tell you what's going on.
14 A. You know, like I say, I mean, this is
15 something when they took me to court, you
16 know, you's got the stuff at court. I mean,
17 why can't you just use that? I mean, it ain't
18 no different than what I'm telling you now.
19 MR. ART: Mr. Melendez, let's get
20 through the questions, get you outta here,
21 we'll be done.
22 THE WITNESS: Well, let's get the
23 questions so I can leave, man.
24 BY MR. KIVETZ:

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1 Q. I'm asking, did they email you any documents
2 beforehand?

3 A. I don't got no papers. I don't know. I'm not
4 looking at papers or nothing. I'm just coming
5 here, my own free will, to get this over with.
6 And, you know, I got -- I got -- you know, I'm
7 locked up right now. I'm trying to finish my
8 sentence, man.

9 Q. I understand.

10 A. And this is getting -- this is stressing me
11 out, man.

12 Q. Before you talked with them, was it just the
13 past week or two?

14 A. Listen, man, are we gonna -- you gonna ask me
15 questions?

16 Q. I am. I'm asking you questions I need to know
17 right now.

18 A. Well, let's -- let's -- let's -- let's do this
19 and so I can leave, please.

20 MR. SWAMINATHAN: He's allowed to
21 ask these questions. I would just get through
22 these questions and keep moving on.

23 MR. ART: Move on. You know what
24 I'm saying?

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Conducted on August 13, 2019

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1 So did you talk to us last week?

2 THE WITNESS: I mean, yeah, you
3 called me to say they were coming to do a
4 deposition, and here you go.

5 BY MR. KIVETZ:

6 Q. Did they tell you to tell the truth during
7 your deposition?

8 A. I am telling you the truth. I'm telling you
9 what I recall and to the best of my knowledge.

10 Q. Did they tell you to tell the truth?

11 A. Of course, I gotta tell the truth. Right?

12 Q. Did they tell you about their client at all,
13 Thomas Sierra?

14 A. I don't know who Thomas Sierra is.

15 Q. Did they tell you about their client, Thomas
16 Sierra?

17 A. I got a paper, something about a civil suit,
18 you know, that the sheriff brought to me,
19 that's it, that I gotta appear in a
20 deposition, court ordered.

21 Q. Did they tell you about their client, Thomas
22 Sierra?

23 A. I mean, I don't know who their client is. I
24 don't -- I don't even know these --

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. Did they tell you --

2 A. -- guys, man.

3 Q. -- that they represent someone who was
4 wrongfully convicted?

5 A. Well, yeah, that's the wrong -- wrongly
6 convicted people, yeah.

7 Q. Did they tell you -- you know that they
8 represent allegedly wrongfully convicted
9 people?

10 A. Well, yeah.

11 Q. How do you know that?

12 A. Because they wrongfully -- I mean, you know,
13 wrongfully convicted people, that's what they
14 trying to do. Right? That's they job, right?

15 Q. How do you know that?

16 A. I mean, I -- come on, man.

17 Q. You've heard of the law firm Lovey & Lovey?

18 A. I mean, like I -- like he said, he sent me
19 papers before, yeah, but I ain't never heard
20 of them. I don't know nothing about, you know
21 what saying, no -- no firms or nothing. You
22 know, it's been a long time since I would --
23 you know, since my case, I never talked to no
24 attorneys, nothing.

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1 Q. Mr. Melendez, if you'd just answer my
2 questions, we're going to get through this
3 pretty quick.

4 They sent you documents, is that
5 correct?

6 A. Documents. I got the documents before the
7 court papers.

8 Q. What did they send you?

9 A. The court papers, the same stuff you got.
10 Basically, probably, the stuff you got.

11 Q. Did they send you a copy of your trial
12 testimony?

13 A. Yeah.

14 Q. Did they send you a copy of your deposition
15 that you took?

16 A. Probably. I throwed them papers out. I don't
17 even want to keep them.

18 Q. Did you review the documents?

19 A. No.

20 Q. Did you -- were there police reports that they
21 sent you?

22 A. Probably.

23 Q. Did they send you any photos?

24 A. Nah.

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1 Q. Anything else that you can remember that they
2 sent you?

3 A. Nah, but I don't keep those papers. Like,
4 honestly, I didn't even want to be here, man.

5 Q. When they talked to you, they told you that
6 they represent Thomas Sierra, who's been
7 wrongfully convicted, is that --

8 A. That's what that paper that the sheriff give
9 me, yeah, that says Thomas Sierra on there.

10 Q. Did they send you a copy of their complaint?

11 A. Nah, I can't recall.

12 Q. How do you know Thomas Sierra has been
13 wrongfully convicted?

14 A. I don't know if Thomas Sierra has been. I
15 already involved -- convicted, that's not --
16 that isn't for me to determine.

17 Q. You don't know if he actually was the guy that
18 shot at your car, right?

19 A. I can't tell you who shot at it. I never
20 identified nobody, so --

21 Q. Did they tell --

22 A. -- I can't tell you.

23 Q. -- you that Rey Guevara was a notorious
24 Chicago police officer?

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1 MR. ART: Did we tell him that?

2 THE WITNESS: No. No. No.

3 MR. KIVETZ: Yeah.

4 THE WITNESS: They ain't gotta tell
5 me that.

6 BY MR. KIVETZ:

7 Q. You knew that?

8 A. Everybody knows Guevara, man.

9 Q. How does everybody know Guevara?

10 A. Come on, man. Like I told you, man, that --
11 that station was full of dirty cops, man.

12 Q. But how do you know that Rey Guevara was a
13 dirty cop?

14 MR. ART: Objection. Asked and
15 answered.

16 THE WITNESS: Listen, man, you know,
17 like I said, man, I got a case put on me that
18 I didn't even do. You know what I'm saying?

19 BY MR. KIVETZ:

20 Q. Did they tell you that this case was against
21 Rey Guevara? And by "they," I mean Mr. Art
22 and Mr. Swarminathan.

23 A. Nah. The -- the paper that the sheriff
24 brought to me got Guevara's name on it.

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1 Q. So was that a complaint?

2 MR. KIVETZ: Did you guys send him
3 the complaint?

4 MR. ART: No. No. Just to
5 stipulate, what happened is we got a court
6 order for the deposition. Then, the prison
7 here required us to serve a subpoena. So some
8 local sheriff gave him a subpoena that is just
9 the deposition subpoena.

10 MR. KIVETZ: It's just the what?

11 MR. ART: Deposition subpoena.

12 MR. KIVETZ: Got it.

13 BY MR. KIVETZ:

14 Q. So, then, if it's just the deposition subpoena
15 that you sent, it doesn't say that he was
16 wrongfully convicted anywhere on that
17 deposition subpoena, right?

18 A. I mean, all I seen was the name, and I didn't
19 read it. Like I said, I didn't even read no
20 paper.

21 Q. See, that's what I'm trying to figure out.
22 How did you know that they represented Thomas
23 Sierra, who was allegedly wrongfully
24 convicted?

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1 A. These are wrongfully convicted lawyers, right?

2 Q. That's it, just by them calling -- just by you
3 talking with them, you knew that Thomas Sierra
4 was wrongfully convicted because their law
5 firm --

6 A. No.

7 Q. -- does wrongful convictions?

8 MR. ART: I think he -- and not to
9 -- I think he testified that we informed him
10 that we were representing Thomas Sierra and
11 the case was about a wrongful conviction.

12 BY MR. KIVETZ:

13 Q. Okay. And then did you -- did they -- did
14 they also tell you that it was against Rey
15 Guevara?

16 A. Yeah, it's on the paper.

17 Q. Okay. And did they tell you anything about
18 Rey Guevara during their conversation with
19 you?

20 A. No.

21 Q. No, they didn't say anything?

22 A. I mean, what would they -- what would they
23 tell me about Guevara?

24 Q. That's what I'm asking you, what did they tell

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1 you?

2 A. Well, what do you think they told me? I mean,
3 like, what you trying --

4 Q. That he was a bad guy.

5 A. Nah, they ain't tell me that.

6 Q. Did he talk about any of the other police
7 officers that were involved in this matter?

8 A. Nah. They -- I mean, they didn't say nothing
9 about no police, just whatever -- whatever was
10 on the papers, I looked and threw them away.

11 Q. What else did you talk about it?

12 A. We ain't talk about nothing. They --

13 Q. Well, you talked about --

14 A. All they -- all they kept telling me is that
15 they gotta do a deposition.

16 Q. Okay.

17 A. And that's what you all doing right now.

18 Q. And you talked with them, you said, for up to
19 30 minutes?

20 A. No. No.

21 MR. ART: No. No. No. No. No.

22 No.

23 THE WITNESS: I ain't never said
24 that.

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1 BY MR. KIVETZ:

2 Q. Ten minutes?

3 A. Not even, probably, that.

4 Q. Okay. So it was a quick phone call is what
5 you're saying?

6 A. Well, I mean, they said they gotta do a
7 deposition and that's it. And I -- and I kept
8 telling them I didn't want to -- I didn't even
9 -- I didn't even want to do it. You know what
10 I'm saying?

11 But, you know, these people with
12 this contempt of court thing and, you know, I
13 mean, I feel like I'm being harassed,
14 actually.

15 MR. KIVETZ: Can you guys stipulate
16 as to what documents you sent him?

17 MR. ART: Yes. I will stipulate
18 that we sent him a copy of his trial testimony
19 and a copy of his deposition.

20 We'll also stipulate that what he's
21 saying right now about throwing him out is
22 something that we told him on the phone.

23 We'll also stipulate that we had
24 short conversations where he hung up the phone

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on us and expressed to us that he did not want
to sit for his deposition.

3 BY MR. KIVETZ:

4 Q. Did they make any promises in return for your
5 deposition?

6 A. For what? No. Nobody made --

7 Q. Did they offer you any legal assistance in
8 return for your --

9 A No

10 Q. Has anyone ever tried to help you out in
11 getting any legal mess that you were in at
12 all?

13 A. No.

14 MR. ART: Objection to the form.

15 MR. KIVETZ: It was a bad question.

16 THE WITNESS: Not --

17 BY MR. KIVETZ:

18 Q. No?

19 A. No.

20 Q. What about have you ever had any interactions
21 with the law firm of Lovey & Lovey before?

22 A. No.

23 MR. ART: Other than the deposition
24 in 2014?

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1 BY MR. KIVETZ:

2 Q. Other than the deposition in 2014.

3 A. No.

4 Q. What about Northwestern, have you ever dealt
5 with Northwestern at all?

6 A. No. Man, the only -- the only lawyer I ever
7 talked to was a lawyer named Bork Guilland
8 (phonetic) and he represented me in my case.

9 And, you know, I don't know whose firm he was
10 with, you know. He was recommended and I
11 hired him and that was it.

12 BY MR. KIVETZ:

13 Q. Do you know who Karen Daniels is?

14 A. No.

15 Q. And did you ever speak with anyone from what's
16 called a Medill School of Journalism?

17 A. (Witness indicating no.)

18 Q. Do you know who David Protest (phonetic) is?

19 A. No.

20 MR. ART: Objection. Relevance.

21 BY MR. KIVETZ:

22 Q. Do you know that there was a case that Steve
23 Art and Anand were working and his name is
24 Jacques Rivera, are you familiar with that at

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1 all?

2 A. I don't know what cases they work on.

3 Q. Did you talk with them about the Jacques --
4 about testifying at trial during the Rivera
5 trial?

6 A. I ain't got nothing to do with Jacques
7 Rivera's trial.

8 Q. I know. But last summer, did you talk with
9 either Steve Art or Anand Swarminathan about
10 testifying at the Rivera trial?

11 MR. ART: Let me just -- can I
12 stipulate something?

13 MR. KIVETZ: Not yet.

14 MR. ART: Okay.

15 MS. BARBER: No.

16 BY MR. KIVETZ:

17 Q. Did you talk with them?

18 A. Nah. Why would I go to -- to -- to -- you
19 know, to testify in somebody's case? I didn't
20 even want to testify in this case.

21 Q. Because they asked you to testify about what
22 you allegedly viewed on the night of May 23rd,
23 1995.

24 MR. ART: What's the question?

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1 THE WITNESS: This case.

2 BY MR. KIVETZ:

3 Q. They did. So -- so do you remember, now,
4 speaking with Steve and Anand last summer
5 about testifying in another case about your
6 particular case that we're talking about here
7 today?

8 A. I don't -- I don't remember. I don't know
9 what you're trying to get at.

10 Q. All I'm trying to find out is did they try to
11 get you to testify in a different case --

12 A. No.

13 Q. -- about this incident?

14 A. As far as I can recall, no. They just was ask
15 -- telling me that they represent this dude
16 and --

17 Q. So it's possible -- so it's possible that they
18 talked to you last summer about testifying in
19 a different case?

20 A. I can't recall, man, because like I said, man,
21 you know, I -- I -- I didn't even want to deal
22 with this right now, man. I didn't even --
23 honestly, I didn't even want to be here, man.

24 Q. Were you in prison last summer?

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1 A. Last summer? I've been in prison since '13.

2 Q. And you have no memory of talking with either
3 -- with anyone from the Lovey & Lovey law firm
4 last summer?

5 A. I don't know. I don't know who I talked to.
6 You know what I'm saying?

7 MR. KIVETZ: All right. Now, you
8 can stipulate.

9 MR. ART: I stipulate that we did
10 talk to him last summer, that's when we sent
11 the two transcripts to him.

12 MR. KIVETZ: Okay. Okay.

13 BY MR. KIVETZ:

14 Q. And when they -- does that refresh your memory
15 at all as to whether or not you talked to them
16 last summer?

17 A. I don't know. I mean, if he says I talked to
18 him, I talked to him, but I'm being honest
19 with you, I don't remember.

20 Q. Do you remember hanging the phone up on them
21 last summer?

22 A. Last summer, I don't know, but I know I hung
23 it up when they tried to call me recently.

24 Q. Rey Guevara, you said several times, now, that

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1 he was a dirty dude, in your terms, right?

2 A. Yeah.

3 Q. Do you have any personal experience where you
4 believed Rey Guevara to have been a dirty
5 police officer?

6 MR. ART: You mean other than what
7 he's already testified about in this
8 deposition?

9 MR. KIVETZ: I'm not going to
10 qualify a question that --

11 MR. ART: Okay. I object to the
12 form of the question.

13 THE WITNESS: In -- in -- in the
14 neighborhood, man, in my neighborhood, I mean,
15 come on, man, we -- we know all these people,
16 man. You know what I'm saying? And this is
17 just from people talking about them, you
18 already know the type of people they are.

19 BY MR. KIVETZ:

20 Q. What do you know about Rey Guevara?

21 A. And, look, I'm not going -- I'm not going into
22 all these details and stuff like this. It's
23 just word on the street, just like that.

24 Q. What was the word on the street?

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1 A. He's dirty. That's it.

2 Q. Any specific circumstance?

3 A. I -- I mean, it's like I said, I just told you
4 what happened, man.

5 Q. How did --

6 A. That's it.

7 Q. How did you learn that he was dirty, from who
8 -- who told you that?

9 A. Just everybody in the neighborhood, man.

10 Whether it's my neighborhood or any other
11 neighborhood, you just -- you just know these
12 people, man. You know what I'm saying?

13 Q. Was it from fellow gang members?

14 A. It's just everybody, period, man. I mean, I
15 -- I -- I don't even wanna go into it with you
16 what they do, man.

17 Q. All right. Alberto Rodriguez was with you,
18 right next to you, in the front side passenger
19 seat throughout your entire experience related
20 to the drive-by shooting on May 23rd, 19 --

21 MR. ART: So I object. I object to
22 this because it's been asked and answered,
23 twice now. So I'll have a standing objection,
24 if it's okay with you, Jeff.

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1 MR. KIVETZ: Fair enough.

2 MR. ART: For all tag-team
3 cross-examination and all cumulative
4 questioning that's already --

5 THE WITNESS: Alberto -- yeah,
6 Alberto was next to me when -- when this --
7 when it happened.

8 BY MR. KIVETZ:

9 Q. Now, when the door opened up and you swerved
10 at it, Alberto Rodriguez was up and looking at
11 the same thing you were looking at, is that
12 fair?

13 A. I don't know because I told him to duck, so I
14 don't -- I'm not looking at him. I'm looking
15 at what these people are on. You know what
16 I'm saying?

17 Q. At what point in time did you tell Alberto
18 Rodriguez to duck?

19 A. Well, I told him "if you -- if you hear shots,
20 just duck." You know what I'm saying? That's
21 it.

22 Q. That's just a general thing that you told him?

23 A. Yeah. I mean, duck. "You hear somebody
24 shooting, just duck." Let me drive. Let me

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1 try to get away, you know. That's what --
2 that's what -- that's what's on my mind. You
3 know what I'm saying?

4 Q. And did you say "duck" the first time that the
5 shooting car opened up its passenger door?

6 A. Nah, I don't -- I don't think so.

7 Q. You said it the second time?

8 A. When I was -- when I was moving away.

9 Q. And when the car first opened up its door, you
10 were, basically, kind of side-by-side?

11 A. I don't know how far. I can't tell you how
12 far. But, like said, when I seen that door
13 open, I threw my car at it so he could shut
14 it, and then I just shot to my right.

15 Q. But you were driving next to each other at
16 that point in time?

17 A. I don't know how far. I mean, I don't know
18 how far, if you're trying to find --

19 Q. You might not have been perfectly next to each
20 other when they opened it, but you were pretty
21 close, is that fair to say?

22 A. We could have been. I don't know. I can't --

23 Q. And then could you -- I know that you said you
24 didn't see his face, but could you make out

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1 anything about the front passenger side
2 person?

3 A. No.

4 Q. Well, you knew he was Hispanic, right?

5 A. I mean, yeah, you could tell they were
6 Hispanic.

7 Q. What about his hair, could you tell what --
8 did he have short hair?

9 A. Nah, I can't -- I can't tell you. I wasn't
10 looking at his face. You know what I'm
11 saying?

12 Q. Okay. You said that he was wearing a white
13 hoodie at one point in time. Do you remember
14 him wearing a white hoodie?

15 A. That, I -- I don't -- I can't recall, even.
16 You know what I'm saying?

17 Q. Okay. I want to talk -- pull out Exhibit 4.
18 Do you see the person right there in
19 front of you?

20 MR. SWAMINATHAN: Which are you
21 looking at?

22 BY MR. KIVETZ:

23 Q. Sierra 003002 on Exhibit 4. Do you see the
24 hoodie that that person's wearing right there?

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Conducted on August 13, 2019

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1 A. Yeah.

2 Q. Is that similar to the hoodie that you saw the
3 front --

4 A. I ain't say --

5 Q. -- right side passenger --

6 A. -- I saw a hoodie, but if you're looking at
7 that hoodie, that's a gray hoodie.

8 MR. ART: Yeah, and I object. That
9 mischaracterizes his prior testimony.

10 BY MR. KIVETZ:

11 Q. So is that the style of hoodie, though, that
12 you saw the person wearing when they opened
13 the door?

14 MR. ART: Same objection.

15 THE WITNESS: I didn't even --

16 MR. ART: He's told you twice now --

17 MR. KIVETZ: Stop, Steve.

18 MR. ART: No. No. No. No. No.

19 MR. KIVETZ: Do not coach the
20 witness.

21 THE WITNESS: I'm not looking at
22 these people to look at their clothes or
23 nothing. I didn't -- I can't tell you what he
24 was wearing. You know what I'm saying?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 BY MR. KIVETZ:

2 Q. Okay.

3 A. If that's what you're trying to get at.

4 Q. What about his facial hair, do you remember
5 any facial hair?

6 A. Like I said, I ain't even look at his face or
7 none of that.

8 Q. You don't know if it was clean cut or
9 anything?

10 A. I don't know.

11 Q. You said you don't know if he had short hair
12 or long hair.

13 A. Nah. I ain't never said nothing.

14 Q. Do you remember if it was styled in a certain
15 way?

16 A. Nah.

17 Q. Any markings on the sides?

18 A. No.

19 Q. You know how people kind of put stuff in
20 their hair on the sides?

21 A. Yeah, the lines and all that? Yeah.

22 Q. You don't remember that, if he had lines or --

23 A. No.

24 Q. -- anything like that?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 A. No.

2 Q. What about his -- his appearance, was he more
3 dark colored or more light colored, his
4 appearance?

5 A. I don't know.

6 Q. You don't -- you don't remember?

7 A. I said I ain't -- like I said, I mean, I ain't
8 look at him. I'm trying to get away. I'm
9 trying -- you know, there's a situation that's
10 going to happening, I'm not trying to sit
11 around and look at people.

12 Q. And then when you're right next to him and he
13 opens the door, is that when you see the gun?
14 Is that why you swerved?

15 A. I didn't see a -- I didn't see nothing. I
16 didn't see no gun.

17 Q. So you just swerved at him because the door
18 opened?

19 A. Yeah.

20 Q. And you were -- you were nervous, basically?

21 A. Very, yeah, nervous.

22 Q. You were nervous that something bad was going
23 to happen, right?

24 A. Sure.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. And that was your instincts --

2 A. Yeah.

3 Q. -- kickin' in, right?

4 A. Yeah.

5 Q. And so have you -- have you ever been in a
6 drive-by shooting before or a victim of a
7 drive-by shooting before this incident?

8 MR. ART: Objection. Relevance.

9 THE WITNESS: Man, look, man, I've
10 been happening --

11 MR. KIVETZ: I'm not --

12 THE WITNESS: -- in Chicago, man.

13 You know what I'm saying? And it ain't the
14 first time I got shot at, if you want know.

15 BY MR. KIVETZ:

16 Q. That's what I was -- that's what I'm looking
17 at.

18 A. Okay.

19 Q. So was that -- that wasn't the first time that
20 you've, basically, been shot at in a drive-by
21 shooting?

22 A. It probably was.

23 MR. ART: I object to the relevance.

24 BY MR. KIVETZ:

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. It probably was?

2 A. Probably was.

3 Q. Now, in your -- you're a Latin King, right,
4 isn't that --

5 A. I'm not a Latin King.

6 Q. You used to be a Latin King, right?

7 MR. ART: I object to the relevance.

8 BY MR. KIVETZ:

9 Q. And then fellow gang members of yours around
10 that time, had they been involved in --

11 A. I can't --

12 Q. -- been victims of car shootings?

13 MR. ART: Same objection.

14 THE WITNESS: I don't know.

15 BY MR. LEINENWEBER:

16 Q. You're not comfortable answering that
17 question, is that fair?

18 A. I'm not -- I mean, this ain't got nothing to
19 do with this.

20 Q. In any event, you were nervous that,
21 basically, someone was going to shoot at you
22 or -- or try to attack you in some manner, is
23 that right?

24 A. I don't know what he was going to attempt to

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 do, you know.

2 Q. And then you swerved your car close enough
3 that it almost hit the right pass -- front
4 passenger door, is that right?

5 A. Yeah. I tried to get him to shut that door.

6 Q. Now, how far open was the passenger door?

7 A. I -- I don't know.

8 Q. So you know how, when doors open, they have
9 like a couple stops, they have one stop, and
10 then two stops. Do you know what I'm talking
11 about?

12 A. It probably wasn't open that much. It
13 probably -- he was on his way to opening, but
14 it wasn't wide open. You know what I'm
15 saying?

16 Q. Yeah. Enough, though, that you -- you were
17 nervous, right?

18 MR. ART: Objection. Asked and
19 answered.

23 BY MR. KIVETZ:

24 Q. Okay. So, now, when the door opened and

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 you're about to swerve at it, how much of the
2 body of the passenger could you see?

3 A. I didn't see. I -- I -- my -- my thing was to
4 get him to shut that door.

5 Q. Okay. And I get that you're saying that you
6 didn't see his face. I understand that. But
7 did you see his entire body even though you
8 couldn't make out his face?

9 A. No. I --

10 Q. Like, could you see his legs?

11 A. No.

12 Q. Could you see his arm?

13 A. No.

14 Q. So you didn't see anything but the door open,
15 is that what you're saying?

16 A. The door opened, yeah.

17 Q. And then you saw somebody kind of making a
18 move, is that fair to say?

19 A. I don't know. I don't know what he was doing.

20 Q. Okay. But you could make out a person in the
21 seat being there and the door was open. Did
22 you see --

23 A. I mean, somebody had to be in the seat to open
24 the door.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. Exactly. And then did you see his hand
2 holding the door, like his right hand holding
3 the door?

4 A. I don't know.

5 MR. ART: Objection. Form.

6 THE WITNESS: All I seen was the
7 door opening, I threw my car at it and it
8 shut, and I shot the other way.

9 BY MR. KIVETZ:

10 Q. Okay. And then when you got next to it,
11 swerving at it, what part of your car almost
12 came close to hitting the shooting car?

13 A. Probably the -- probably the front bumper.

14 Q. The front bumper?

15 A. Yeah.

16 Q. Okay. And so you take the front bumper, you
17 swing it towards their door, and did they
18 close it at that point in time?

19 A. Yeah, it was shut.

20 Q. And then you are - you drive past them?

21 A. No, I don't drive past them.

22 Q. Okay. What happened?

23 A. I shot to the right, towards Wrightwood.

24 Q. Okay. And, now, do they also shoot right

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 towards Wrightwood?

2 A. Well, they kinda -- I don't know, but I know
3 they were coming behind. You know what I --

4 Q. So they were --

5 A. All I heard was shots, and then as I'm going,
6 I look in the mirror and the car was coming.
7 I turned right on Kenmore (sic) and they kept
8 going down Wrightwood.

9 Q. And when they turned right, that's when they
10 opened the door the second time?

11 MR. ART: Wait. I think we need
12 more specifics about which way they turned.

13 BY MR. KIVETZ:

14 Q. When the -- when the car turned right onto
15 Wrightwood, when you turned right onto
16 Wrightwood --

17 A. Yeah.

18 Q. -- is that when the shooter's vehicle opened
19 up for the second time?

20 A. When I -- when I turned this way (gesturing),
21 when -- when I -- when I shot through my car,
22 the door shut. When I went this way
23 (gesturing), that's when the door opened and
24 the feet came out and hold the -- and hold the

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 door, and all I heard was shots and I just
2 tried to get away. That's it.

3 Q. Were there any shots fired before the door
4 opened the second time?

5 A. No.

6 Q. No. Okay.

7 And then you're -- you're making the
8 right onto Wrightwood, you're behind the
9 shooting vehicle and the door opens up again,
10 for the second time. Is that how it works?

11 A. I wanna say behind it. I was just like on
12 the side. As soon as that door closed, I shot
13 this way (gesturing), so I was kind of on the
14 side of it.

15 Q. So your front hood was equal to, basically,
16 where the front passenger doors were located.
17 Is that fair to say?

18 A. Well, it was there when I threw the car, but I
19 mean, my bumper was going to hit the door, and
20 as soon as he closed, I shot to my right.

21 Q. Okay. And that's the part that I'm trying to
22 figure out, because I'm not -- I'm not getting
23 it clearly.

24 So you're both going down Wrightwood

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 now, and then he's got his door open for the
2 second time, and that's when the gun starts
3 shooting. Is that what you're saying?

4 A. We're not both going down Wrightwood.

5 Q. He doesn't follow you down Wrightwood?

6 A. Eventually, he does, after I shoot this way.
7 (Gesturing.) After all the shots are done,
8 I'm going down Wrightwood, and I look in the
9 mirror and they're coming behind.

10 Q. So you would have had to pass him to get down
11 onto Wrightwood, right?

12 A. I didn't pass him, I just have to shoot right.

13 Q. I get it. But he, then, turns right onto
14 Wrightwood. So you had to have enough time to
15 get onto Wrightwood and then, also, leave him
16 enough room to also get onto Wrightwood.

17 A. I mean, there's -- there's a -- there's a
18 little thing like this (gesturing), where --
19 where cars park right there, by -- I'm not
20 sure if it's a church or something. Whatever
21 it is, there's enough room for him just to
22 (gesturing), you know.

23 Q. So but --

24 A. So as far as after the shooting, I don't know

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 what he did, but like I said, I was already
2 gone, and I looked in the mirror and he was
3 behind me, man.

4 Q. All right. So you did, at least, get in front
5 of him at some point in time to --

6 A. I didn't get --

7 Q. -- turn onto Wrightwood?

8 A. -- in front of him. I never said I got in
9 front of him.

10 Q. All right. So the door opens a second time,
11 and where are you when the door opens?

12 A. When that door opened the second time, I'm
13 shooting towards my right.

14 Q. And do you --

15 A. I'm trying to go around --

16 Q. When the door opens, do you -- can you make
17 out his body at all? I know you can't see his
18 face.

19 A. I mean, I didn't look at it. I didn't look at
20 nobody, none of that stuff, you know. I just
21 heard shots and I just kept going, man. I
22 ain't try to look at nobody, man. I'm trying
23 to get my friends out the situation. You know
24 what I'm saying?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. All right. And there is -- your -- your -- a
2 bunch of your windows get shot out, right?

3 A. I mean, I don't know how many got shot out. I
4 know I -- I heard the car getting hit.

5 MR. KIVETZ: I'm going to fill the
6 water glass.

7 MR. ART: Do you need any water,
8 Mr. Melendez?

9 THE WITNESS: No.

10 (Brief pause.)

11 BY MR. KIVETZ:

12 Q. Okay. I'm just going to keep going.

13 When you went right on Wrightwood,
14 did you see something in the front passenger
15 side's hand?

16 A. Nah, I didn't see nothing.

17 Q. I want you to turn to page 90 of the
18 deposition. I'm going to read the questions
19 and the answers from your deposition back in
20 another matter.

21 MR. ART: I just object to the
22 extent that Mr. Leinenweber did this precise
23 impeachment.

24 MR. KIVETZ: Okay.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 BY MR. KIVETZ:

2 Q. And did you see the -- "Question: And did you
3 see that person in the front passenger seat in
4 the car to your left stick anything out the
5 door at that -- at that point or did you just
6 see the door open?

7 "I seen the door open and that's
8 when I seen something in his hands. So I, you
9 know -- and then somebody threw the car at him
10 so he could shut the door. Once he shut the
11 door, that's when I went west on Wrightwood.

12 "Question: So you actually saw
13 something in his hand when he opened the door
14 for the first time?

15 "Answer: Yes."

16 MR. ART: Objection. Not
17 impeachment.

18 BY MR. KIVETZ:

19 Q. Did you provide those answers to those
20 questions?

21 A. I can't recall.

22 Q. You don't remember. But as you sit here
23 today, you don't remember seeing the gun, is
24 that what you're telling me?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 A. Yeah, I didn't see no gun. I'm trying to tell
2 you that.

3 Q. Now, what about the -- the gun, could you tell
4 by the noise that it was making what type of
5 gun it was?

6 A. I'm not a -- I'm not --

7 Q. You're not a gun guy?

8 A. Yeah. I can't tell you what it is.

9 Q. Now, just generally, if you remember, do you
10 know if it was like a big assault rifle or was
11 it a pistol?

12 A. I don't know.

13 Q. Do you know what a TEC-9 is?

14 A. Yeah, I know what a TEC-9 is.

15 Q. So that's an automobile gun, right, and it's
16 kinda got a long stock on the bottom, right?

17 MR. ART: I object to the narrative
18 about guns and I object to the statement that
19 it's an automatic.

20 THE WITNESS: So what about it? I
21 mean, like -- I mean --

22 MR. ART: Wait till he asks you --
23 he's going to ask you an actual question.

24 BY MR. KIVETZ:

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. That's what I'm asking you, was it -- could
2 you tell whether the gun was more of a -- a
3 TEC-9 --

4 A. I didn't --

5 Q. -- style or --

6 A. I can't tell you --

7 Q. -- was it a .9 --

8 A. -- because I didn't see no --

9 Q. -- millimeter?

10 A. -- gun, you know, if that's what you're trying
11 to get at.

12 Q. That's what I'm trying to ask, yeah.

13 All right. So as you sit here
14 today, you have absolutely no memory about the
15 gun?

16 A. No.

17 MR. ART: Objection. Asked and
18 answered. Go ahead.

19 BY MR. KIVETZ:

20 Q. In your previous deposition testimony, you
21 were asked questions about whether or not
22 someone threw down the crown.

23 Do you recall that at all?

24 MR. ART: Objection. Hearsay.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 THE WITNESS: I can't recall. All I
2 can recall is he actually put up the "C" on
3 the window.

4 BY MR. KIVETZ:

5 Q. As you sit here today, do you remember whether
6 or not there were other gang signs made at the
7 window besides the "C"?

8 A. Nah.

9 Q. No. And so it's possible that there were
10 other gang signs made?

11 A. No.

12 Q. It's not possible?

13 A. No.

14 Q. And what does it mean to throw down the crown?

15 MR. ART: Objection. Relevance.

16 THE WITNESS: I mean, I mean, if you
17 throwing your rival's gang upside down, what
18 you trying to tell them? You showing some
19 type of disrespect, right?

20 BY MR. KIVETZ:

21 Q. Exactly.

22 A. That's what it would mean, but I'm not saying
23 it happened either. You know what I'm saying?

24 Q. What does it mean when someone flashed the

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Cobra sign at you?

2 A. That mean they just throwing they symbol.

3 That's it.

4 Q. But does it tell them, like, "watch out, we're

5 Cobras"?

6 A. I don't know what he was -- I don't know what

7 he was trying to do, you know.

8 Q. What about when -- did you ever flash your

9 gang sign?

10 A. Yeah, I flashed my gang sign.

11 Q. What did it mean when you flashed your gang

12 sign?

13 A. Letting them all know who I was. That's it.

14 MR. ART: Objection. Relevance.

15 BY MR. KIVETZ:

16 Q. Was that to let them know that -- not to mess

17 with you?

18 MR. ART: Same objection.

19 THE WITNESS: I don't know. I mean,

20 they could take it the way they want to take

21 it. I just, you know, just throw it out just

22 to throw it out.

23 BY MR. KIVETZ:

24 Q. You said a lot of people -- a lot of different

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 gangs had to go through the monument area.

2 Do you remember that testimony?

3 A. Yeah.

4 Q. You said everybody had to go through there.

5 A. Everybody goes -- I mean, when you gotta get
6 to one place to another, eventually, you gotta
7 pass through somebody's neighborhood.

8 Q. Understood. And so it could have been any
9 number of gangs that had to pass through that
10 monument area to get to wherever they were
11 going?

12 A. I mean, I see -- like I said, everybody goes
13 through there, man.

14 Q. Do you know Imperial Gangsters?

15 A. Yeah, I know Imperial Gangsters.

16 Q. Do you know of Imperial Gangsters having to go
17 through that area?

18 A. I don't know. I mean, I mean, the streets of
19 Chicago, anybody could go through them. So, I
20 mean, wherever they choose to go, they choose
21 to go. I can't tell some person to go one way
22 or another.

23 Q. What --

24 A. You know, I went through any street I wanted.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 So, I mean, I guess everybody could do what
2 they want to do.

3 Q. Were you guys friendly with Imperial Gangsters
4 in May of 1995?

5 A. No.

6 Q. No, you were not, right?

7 A. Nah.

8 Q. So tell me a little bit about this: What are
9 "people" and what are "folks"?

10 MR. ART: Objection. Relevance.

11 THE WITNESS: I mean, it's just two
12 groups, two different groups. I mean, that's
13 it. You know, that's what they call them and
14 that's what they call us.

15 BY MR. KIVETZ:

16 Q. Okay. So what are Imperial Gangsters called,
17 for the record?

18 A. I mean, folks. That's it.

19 Q. Okay. And what are Latin Kings called, for
20 the record?

21 A. They are people. They carry around other
22 people.

23 Q. Okay. And you guys are at odds with each
24 other, right, in May of 1995?

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 A. I mean, we weren't friendly, if you're trying
2 to say. You know what I'm saying?

3 Q. What about other shootings between the two
4 gangs, were there any other --

5 A. That, I don't --

6 Q. -- shootings before --

7 A. I don't --

8 Q. -- before May 1995?

9 A. I don't know because, you know, I -- I never
10 had no interactions with them like that. You
11 know what I'm saying? I -- I even lived in
12 they neighborhood and they never messed with
13 me. So, you know, as far as that, I don't
14 know.

15 Q. Was there --

16 MR. ART: And I object to the
17 shootings between two gangs that are
18 unidentified.

19 BY MR. KIVETZ:

20 Q. Okay. But what I'm trying to find out is,
21 before May of 1959, do you know if there were
22 any issues, right around that time period,
23 between the IGs and the Latin Kings?

24 A. No.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. Do you know -- have you ever heard of the term
2 "false flagging"?

3 A. I mean, yeah, I heard of it.

4 Q. What does that mean?

5 A. I mean, false flagging is just like you say,
6 it's what it -- exactly what the street's
7 trying to say.

8 Q. Yeah, but what does it mean to you?

9 A. That means we throw somebody else stuff up,
10 you know, that's what it means.

11 Q. Okay. And why would someone do that?

12 A. I don't know. I mean, I don't know.

13 Q. Well, would they do that to put the police off
14 on a different line in order to avoid --

15 A. I can't tell you --

16 Q. -- being stopped by --

17 A. -- what the intent --

18 MR. ART: I object to form --

19 THE WITNESS: -- would be. You know
20 what I'm saying?

21 MR. ART: -- and relevance --

22 THE WITNESS: Somebody doing that --

23 MR. ART: -- to foundation.

24 THE WITNESS: -- I can't even tell

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 you what the intentions are, you know.

2 BY MR. KIVETZ:

3 Q. Have you ever thrown a false flag?

4 A. I don't need to.

5 MR. ART: Objection. Relevance.

9 BY MR. KIVETZ:

10 Q. You have tattoos to show that you're a Latin
11 King?

12 A. Yeah. I mean, why would I throw anything else
13 out? You know what I'm saying?

14 Q. What were you wearing the night of the
15 incident?

16 A. I can't tell you what I was wearing. I don't
17 know.

18 Q. It was -- it was May. You think -- do you
19 thing you would have had your tattoos out?

20 MR. ART: Objection.

21 THE WITNESS: I don't know.

22 BY MR. KIVETZ:

23 Q. Okay. And this is a delicate question, but
24 you have two teardrops here. (Gesturing.)

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 A. Yeah.

2 Q. What does --

3 MR. ART: Objection. Relevance.

4 BY MR. KIVETZ:

5 Q. -- that mean?

6 A. Well, I'll tell you what it means, two of my
7 kids passed away, that's why I got them for.

8 You know what I'm saying?

9 Q. I'm sorry about --

10 A. Actually, I got three kids that passed way.

11 Q. I read that in your deposition. I'm sorry
12 about that. It's the worst thing ever and I
13 apologize for your loss.

14 You have other tattoos on your body
15 that represent where you -- what gang you
16 belong to?

17 A. Yeah.

18 MR. ART: Objection. Relevance.

19 BY MR. KIVETZ:

20 Q. And do you know whether or not you were
21 showing any of your tattoos when you were in
22 the car in May of 1995?

23 A. I was driving. I was just driving. I wasn't
24 trying to show nobody nothing.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 Q. What about Alberto, what gang is he in?

2 A. I can't -- Alberto, probably, Latin Kings,
3 too.

4 Q. Okay.

5 A. You know. And, I mean, that's what he is.

6 Q. And what about Noel Andujar, what gang was he
7 in?

8 A. Latin Kings, too.

9 Q. Okay. And do you know if they have any -- had
10 any tattoos at that time period?

11 A. To honestly tell you, I can't recall anything,
12 any tattoos on any of them.

13 Q. What about colors, like what were the Latin
14 King colors in May of 1995?

15 A. The same they always been, man.

16 Q. Which is what?

17 A. It was black and yellow, man.

18 Q. Black and yellow. Okay.

19 And then what about on the car you
20 drive, is there anything that kind of tells
21 other people what gang you are?

22 A. No.

23 Q. No. Okay.

24 Now, do you know, were you regularly

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 wearing your colors in May of 1995? Was that
2 something you wore every day?

3 A. Nah.

4 Q. Nah.

5 A. Actually, I didn't even like wearing them.

6 Q. You didn't look good in black and gold?

7 A. I didn't like wearing them.

8 Q. Okay. What about Alberto and Nuni, would they
9 -- did they often wear their colors?

10 A. No. They weren't wearing nothing like that.

11 Q. What were the colors of the Imperial
12 Gangsters, do you know?

13 A. I mean, yeah, the Gangsters is black and pink
14 or it was black and green or black and blue.

15 I mean, whatever, I mean.

16 Q. That's what I'm trying to figure out.

17 A. Okay.

18 Q. Okay. But you didn't see anything -- no,
19 strike that.

20 Now, after you got shot at, you
21 spoke with several police officers that met
22 you on -- in the Fullerton area, is that
23 right?

24 MR. ART: Objection. Form.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 THE WITNESS: They didn't -- they
2 didn't met me. They stopped me.

3 BY MR. KIVETZ:

4 Q. Okay. And you had a conversation with them,
5 right?

6 A. I mean, they stopped me and asked me
7 questions, but as far as the questions, I
8 can't recall what questions they were asking
9 me, but they did stop me as I was trying to
10 get to the police -- I mean, to the hospital.

11 Q. And it's fair to say that you told them what
12 just happened?

13 A. "My friend got shot," yeah, I told them that.

14 Q. And, obviously, your car windows were shot out
15 at that --

16 A. Yeah. And my --

17 Q. -- point in time, right?

18 A. And my buddy was in the back seat with a --

19 Q. Your buddy was --

20 A. -- bloody face, yeah.

21 Q. -- was -- basically, was dying in -- in the
22 back seat of your car, right?

23 A. Yeah.

24 Q. And so you wanted to do everything in your

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 power to help your buddy, get him to the
2 hospital, is that right?

3 A. Yeah. I was trying to get him to the
4 hospital, but they stopped me.

5 Q. And you also wanted to tell the police
6 officers what you had just seen, isn't that
7 right?

8 A. I just -- I told them what happened.

9 Q. Okay. And you -- you told them, generally,
10 what happened, is that fair to say?

11 A. Yeah.

12 Q. Okay. And you told them that it was a black
13 Buick Park Avenue car?

14 A. Yeah.

15 Q. And you were familiar with cars, right?

16 A. Yeah. I owned a Buick, so I know what a Buick
17 looked like.

18 Q. And you told them that it had spoke wheels,
19 isn't that right?

20 A. Nah. I told them it had custom rims.

21 Q. Okay. Do you remember telling them,
22 specifically, that it was custom -- custom
23 rims without spokes inside the rims or with
24 spokes inside the rims?

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Conducted on August 13, 2019

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1 MR. ART: I object to the form of
2 that question and I object because he has
3 answered questions about this.

4 THE WITNESS: I already -- I told
5 them -- I told them I had tints and I had
6 custom rims. That's it.

7 BY MR. KIVETZ:

8 Q. What type of custom rims did you have on your
9 car?

10 A. Well, I just --

11 Q. Yeah, but you didn't tell us what type.

12 A. Well, they're Vogues, 30 new Vogues, that's
13 what they are.

14 Q. I thought somebody was like Kurac (phonetic)
15 or something like that. Am I --

16 A. Those are Cragars, if you -- if you trying to
17 get the exact name, Cragars.

18 Q. That's what I'm asking you, Cragars. And
19 that's spelled C-R-A-G-E-R?

20 A. I don't know how you spell it, but that might
21 be close to it, yeah.

22 Q. And they're like 3030s, is that the right
23 name?

24 A. They're thirty spokes.

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1 Q. Thirty spokes, right?

2 A. Right.

3 Q. Okay. So you had in your car rims, Cragars,
4 that had spokes going all the way around them,
5 but they were custom, right? They were
6 shinier than what were normally on, like, for
7 instance, the black Buick Park Avenue, is that
8 correct?

9 MR. ART: Objection. Form.

10 THE WITNESS: If you look -- even if
11 you look at that car, you see that they're --
12 they're -- they're chrome.

13 BY MR. KIVETZ:

14 Q. I get that they're chrome, but my question is,
15 you do -- if you could show Exhibit 5. Right?

16 MR. ART: I really object because
17 Mr. Leinenweber did go through this at length.

18 BY MR. KIVETZ:

19 Q. The spokes, those are spokes in the wheels,
20 right? They're not -- they're not chrome, as
21 you say, but they are spokes in the wheels,
22 correct?

23 MR. ART: Objection. Asked and
24 answered.

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1 THE WITNESS: They're -- they're --
2 they're hub caps. Yeah, they're spokes.

3 BY MR. KIVETZ:

4 Q. With spokes.

5 A. So what color are they?

6 Q. Well, you tell me, what color are they?

7 A. I mean, you saying they're not -- they're not
8 chrome, but I mean, what color do they look
9 like?

10 Q. Well, they look chrome to me. Are they not?

11 A. Okay. You just answered your own question.

12 Q. All right. So there we go. So they're --

13 A. You just answered your own question.

14 Q. The car --

15 A. They're chrome, yeah.

16 Q. The car that you saw the night that Detective
17 Guevara brought you out had chrome hub caps
18 with spokes inside of them, is that correct?

19 A. Could you say the question again?

20 Q. The night that you -- that Detective Guevara
21 brought you outside to see the -- the car that
22 you say was not it, did in fact, though, have
23 chrome hub caps with spokes inside of them?

24 MR. ART: Objection. Form.

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1 THE WITNESS: It's got factory
2 wheels, hub caps.

3 BY MR. KIVETZ:

4 Q. Hub caps, but they had spokes all the way
5 around the wheel?

6 MR. ART: I object.

7 THE WITNESS: That's how they come.

8 MR. ART: The photo --

9 MR. KIVETZ: Stop.

10 BY MR. KIVETZ:

11 Q. That's how they come.

12 A. That's how they come from the factory.

13 Q. And -- and -- and they have, like a bike
14 wheel, spokes all the way around them, right?

15 A. You're looking at them, I mean.

16 Q. And that's what I'm telling you, I need you to
17 just say, yes, that those are spokes that --

18 (All parties speaking at once.)

19 MR. ART: No. That's an
20 inappropriate question. Hold on. I object.

21 MR. KIVETZ: That's what I'm trying
22 to get him --

23 MR. ART: State a question and get
24 an answer.

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 MR. KIVETZ: I have. He keeps --

2 MR. SWAMINATHAN: You've already
3 asked -- you want to get him to say that it
4 has spokes? You have asked him that question
5 five times. Five times, you guys got an
6 answer to that question.

7 MR. ART: Yeah.

8 (All parties speaking at once.)

9 MR. KIVETZ: Do you want to
10 stipulate that it has spokes around it?

11 MR. ART: I will stipulate that the
12 photo speaks for itself and depicts a car, as
13 the witness has described it, with hub caps,
14 as the witness has described them.

15 BY MR. KIVETZ:

16 Q. Sir, these guys are going to say what they're
17 going to say, Mr. Melendez. My question is --

18 A. I keep telling you that these are factory
19 rims. They're not custom. And the car don't
20 got no tints.

21 Q. And my only question to you is, that has
22 spokes in the hub cap, correct?

23 MR. ART: I object to the question.

24 BY MR. KIVETZ:

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Conducted on August 13, 2019

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1 Q. Answer yes or no, sir. Does it have spokes in
2 the hub cap or not?

3 A. Look at it.

4 Q. I can't answer --

5 A. Those are factory hub caps, man. Of course,
6 they got -- I mean, yeah, if you want -- if
7 you want -- do you want to say they spokes?
8 Yeah, they spokes, but --

9 MR. ART: Okay. There it is.

10 THE WITNESS: -- you know.

11 MR. KIVETZ: Unfortunately --

12 MR. ART: You just got it.

13 MR. KIVETZ: I didn't.

14 MR. ART: Yeah, can you read back
15 the last answer?

16 MR. KIVETZ: Can you read back?

17 So you guys can't be yelling at me
18 if I just got it.

19 MR. ART: We're not yelling at you.

20 MR. KIVETZ: You are.

21 MR. ART: We're making objections
22 for the record.

23 MR. KIVETZ: Can you read back
24 his --

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1 MR. ART: Actually, don't read it
2 back. Can you just say exactly what you said,
3 again, sir, if you don't mind.

4 THE WITNESS: I'm saying, if you
5 look at it, they're hub caps and, yeah, they
6 spokes. They got spokes in them.

7 MR. KIVETZ: Thank you.

8 THE WITNESS: I mean, they're
9 factory, factory rims.

10 MR. KIVETZ: That's what I was
11 looking for.

12 BY MR. KIVETZ:

13 Q. Now, afterwards, you say, as you sit here
14 today, you don't remember going and looking
15 through gang photo books?

16 MR. ART: Objection. Asked and
17 answered. You're asking all the same things
18 Mr. Leinenweber asked him.

19 MR. KIVETZ: I'm trying to figure
20 out some of these issues, so --

21 MR. ART: You're really just asking
22 -- I asked it, Mr. Leinenweber asked it and,
23 now, you're asking it. So --

24 MR. KIVETZ: I'm just going to keep

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1 going here.

2 MR. ART: -- let's please try to
3 lead it to new areas.

4 MR. KIVETZ: I'm trying to.

5 BY MR. KIVETZ:

6 Q. Do you remember -- you don't remember, is that
7 what you're saying, you don't remember looking
8 at gang photo books?

9 A. Well, I already like -- honestly, I already
10 answered that question. And what did I tell
11 you?

12 Q. You're saying you don't remember.

13 A. I don't recall, yeah.

14 Q. But in your deposition that was several years
15 ago, you said you did go through gang photo
16 books.

17 A. I probably did. I mean, I can't recall. I
18 can't tell you I remember --

19 Q. And do you remember why you went through gang
20 photo books?

21 A. I mean, they wanted -- they wanted me to look
22 in there and see if I recognized anybody.

23 Q. So, yeah, you were trying to look at the -- at
24 the gang photo books in order to identify the

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 person that was shooting at your car, is that
2 right?

3 A. Well, that's the -- that's the purpose that
4 you view the book for, if that's what you're
5 trying to get at.

6 Q. Yeah. And you spent a lot of time going
7 through those books, right?

8 A. Okay. And if I did -- I mean, like, what --
9 what you want -- what you wanna know?

10 Q. All I need to know is did you spend a lot of
11 time going and looking through those books?

12 A. I don't know. If he gave me some books, I
13 probably did look through them. I mean, I
14 can't tell you if I did. I can't recall. But
15 that's, basically, why they give you books
16 like that, to look through them, yeah, they --

17 Q. And you were willing to look through the
18 books, right?

19 A. I mean, if I did, I did. Yeah, I probably
20 did. I mean, I can't recall.

21 Q. When you were looking through the books, did
22 anyone tell you or force you to pick anybody
23 out of the books?

24 MR. ART: Objection. Foundation.

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Conducted on August 13, 2019

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1 THE WITNESS: If I did go through
2 that book and look at it, I ain't seen nobody
3 in the book that I -- that jumped out at me.

4 BY MR. KIVETZ:

5 Q. And you if did look through those books,
6 nobody forced you to pick anybody from those
7 books, did they?

8 MR. ART: Objection. Foundation.

9 BY MR. KIVETZ:

10 Q. Is that right, sir?

11 A. No.

12 Q. It's not? Somebody did force you?

13 A. No.

14 Q. Unfortunately, I have to follow-up because I'm
15 not clear what you meant by "no."

16 No one -- let me rephrase.

17 Did anyone force you to pick out
18 anyone from the gang photo books when you were
19 looking at them?

20 A. Like I said, if they showed me a photo book, I
21 looked at it. I didn't pick nobody that I
22 knew. Nobody forced me to pick nobody. I
23 don't know what you're trying to get at.

24 Q. The lighting in the monument area, you had

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1 been there at night before this incident,
2 right?

3 A. I probably passed through at night, yeah.

4 Q. And do you know, generally, if there was
5 pretty good lighting around the monument area?

6 A. When?

7 Q. At night, before you were at that scene
8 yourself on May 23rd, 1995.

9 A. Why would there be light if it wasn't even
10 dark?

11 MR. ART: You mean just in general?

12 BY MR. KIVETZ:

13 Q. I asking in general. Before May 23rd, 1995,
14 you had been to the Logan Square monument at
15 night, correct?

16 A. I mean, I passed through it.

17 Q. And when you passed through there, did you
18 know -- did you recognize the lighting in the
19 park?

20 A. I mean, I can't tell you, but it's light
21 there. I mean, they got light poles there,
22 yeah.

23 Q. They have a lot of light poles there, it's
24 pretty --

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Conducted on August 13, 2019

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1 A. Yeah.

2 Q. It's pretty lit up, is that fair to say?

3 A. Could be.

4 Q. And when an area is lit up, you can more
5 easily see inside a car, is that fair to say?

6 MR. ART: Objection. Foundation.

7 THE WITNESS: I can't tell you.

8 BY MR. KIVETZ:

9 Q. Have you ever shown a flashlight at a -- at a
10 tinted window before?

11 A. No. I never did that before.

12 Q. No? I mean, would you generally agree with
13 the premise that if you put a flashlight into
14 a tinted window, you can see more easily
15 beyond the tint into the car?

16 MR. ART: Objection. Relevance.

17 THE WITNESS: I don't know. I ain't
18 never did it before, I can't tell you.

19 BY MR. KIVETZ:

20 Q. You were locked up in Cook County with Thomas
21 Sierra at one point?

22 A. I don't know. I was locked up, but I don't
23 know --

24 MR. ART: Objection. I mean,

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1 Mr. Leinenweber asked exactly these questions.

2 There's no reason to ask them twice.

3 MR. LEINENWEBER: He was in the
4 bathroom.

5 MR. ART: I'm sorry.

6 MR. KIVETZ: I took a bathroom
7 break.

8 MR. ART: That's fine.

9 Objection to bathroom break.

10 BY MR. KIVETZ:

11 Q. Do you know what a kite is?

12 A. A what?

13 Q. A kite.

14 MR. ART: Objection. Relevance.

15 THE WITNESS: Yeah. I know what a
16 kite is.

17 BY MR. KIVETZ:

18 Q. Did you ever get a kite or send a kite to
19 Thomas Sierra?

20 A. Nope.

21 Q. Did you ever receive a kite about your
22 testimony relating to Thomas Sierra?

23 A. Nope.

24 Q. Do you ever get any letters from any other

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1 prisoners about Thomas Sierra?

2 A. Nope.

3 Q. Did you talk with any other gang members about
4 Thomas Sierra while you were locked up?

5 A. Nope.

6 Q. So you do know that Thomas Sierra was locked
7 up in Cook County with you at that time?

8 A. I don't know.

9 Q. You don't remember?

10 A. No.

11 Q. You don't -- okay.

12 A. They got a bunch of buildings, so you know,
13 you don't know who's -- who you're with.

14 CORRECTIONS OFFICER: We need to
15 take a lunch break for Mr. Melendez.

16 MR. ART: I think we're going to be
17 done soon.

18 (Discussion held off the record.)

19 MR. KIVETZ: Let's talk and then
20 we'll let you know.

21 MR. ART: Okay. Go talk, quick.
22 Give us one minute to talk.

23 (Brief pause.)

24 BY MR. KIVETZ:

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1 Q. I just have a couple follow-up questions
2 regarding Alberto Rodriguez.

3 Did you stay in touch with Alberto
4 Rodriguez after the May 23rd incident?

5 A. I don't got -- I don't keep in touch with
6 nobody, you know. Nah, he was from another
7 neighborhood. I was from another
8 neighborhood.

9 Q. What about the funeral for Nuni, did Alberto
10 go to the funeral?

11 A. I don't know.

12 Q. Did you go to the funeral?

13 A. Honestly, I can't even recall if I went.

14 Q. You were fairly close friends with Alberto
15 Rodriguez, is that fair to say?

16 A. The way I met him is because I had a
17 girlfriend that lived over there, you know,
18 who I was -- I was close-close, not -- not
19 like that.

20 Q. Were you closer with Nuni than Alberto?

21 A. None of them. I just used to go over there
22 because my girl lived there and I met them in
23 the neighborhood, you know.

24 Q. And how often would you see Alberto before

Transcript of Jose Melendez
Conducted on August 13, 2019

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1 this incident?

2 A. Not too often.

3 Q. Twice a week?

4 A. Not too often. I -- when I go over -- went
5 over there, I went to see my girl and I would
6 see her, stay with -- in front of her crib,
7 and then from there, I shoot back to my
8 neighborhood.

9 Q. And then the same thing for Nuni, you don't
10 remember how often --

11 A. No. I didn't -- I didn't hang with them like
12 that, so no.

13 Q. And you have no memory of talking to Alberto
14 about what happened to Nuni on May 23rd, 1995?

15 A. I mean, he was there, he seen what happened,
16 so.

17 Q. And that's what I'm trying to get to. You
18 never talked with him about what he saw that
19 day?

20 A. Nah.

21 Q. You guys never even discussed a huge traumatic
22 event in your life?

23 MR. ART: Objection. Asked and
24 answered.

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1 THE WITNESS: I ain't -- I mean,
2 like I say, he was there when it happened. So
3 whatever he seen, he seen, you know, and
4 whatever he told you all, he told you all.
5 I'm telling you what I seen. You know what
6 I'm saying? So I don't know what he's saying
7 he seen, I can't tell you that. I don't know.
8 You know, I ain't talk to him about it
9 afterwards or none of that stuff. Something
10 bad happened, you know.

11 BY MR. KIVETZ:

12 Q. And did you talk to any of your fellow gang
13 members at that time about retaliating in any
14 way?

15 A. No.

16 Q. No?

17 A. No.

18 Q. That's not something that you would do?

19 A. No.

20 Q. You had let the police handle it, try to solve
21 the murder?

22 A. I mean, the police do whatever they gonna do.
23 I mean, hey, my buddy got shot and -- you
24 know, he got shot. I mean, police gonna ask

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1 questions, they gonna ask you whatever they
2 gonna ask. You know what I'm saying?

3 MR. KIVETZ: I have no further
4 questions.

5 MS. BARBER: Well, are you --

6 MR. LEINENWEBER: I was going to
7 finish up.

8 MS. BARBER: I don't have any
9 questions.

10 MR. ART: Okay.

11 REEXAMINATION

12 BY MR. LEINENWEBER:

13 Q. Gangs retaliate, though, right?

14 MR. ART: Objection. Relevance.
15 Foundation.

16 THE WITNESS: I mean, I can't -- I
17 can't tell you what anybody would do. What
18 every person does, he does on his own. You
19 know, I can't -- I mean.

20 BY MR. LEINENWEBER:

21 Q. Right. But you were in a gang, right, the
22 Latin Kings?

23 A. Yeah, I was in a gang.

24 Q. And if there was a shooting, there was usually

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Conducted on August 13, 2019

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1 retaliation, right?

2 MR. ART: Objection. Form and
3 foundation.

4 THE WITNESS: I mean, if that's what
5 you wanna say, that's what you saying, I mean.

6 BY MR. LEINENWEBER:

7 Q. I'm asking if you agree with that or not.

8 A. I mean...

9 Q. It was your neighborhood, right?

10 A. Yeah. But, I mean, that's not something that
11 happens all the time. I mean, you don't --

12 Q. No. It doesn't happen all the time, but it
13 happens, correct? It happens?

14 A. Probably. I don't know. I mean, it just
15 depends.

16 Q. It's been a long time, but you know that that
17 happens, right?

18 A. It depends. I don't know. I can't -- you
19 know.

20 Q. And you looked at -- you looked at gang books,
21 right?

22 MR. ART: Objection. Asked and
23 answered.

24 BY MR. LEINENWEBER:

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1 Q. And you looked at -- is that right?
2 A. I mean, I already answered that. I think I
3 answered that already.
4 Q. Yeah, you did, and I'm asking again. I'm
5 asking again.
6 A. And, like I'm saying, I already answered that
7 for you.
8 Q. Okay. And you looked at the photo array,
9 right?
10 A. I mean, I already answered that question.
11 Q. And you looked at a line-up, right?
12 A. I looked at a line-up?
13 Q. That's right.
14 A. I never seen no line-ups.
15 Q. And the reason you did, the reason you looked
16 at that, is because you saw his face?
17 MR. ART: Objection.
18 THE WITNESS: No, I didn't.
19 MR. ART: Mischaracterizes his
20 testimony.
21 THE WITNESS: Hold on. You see what
22 I'm saying?
23 MR. LEINENWEBER: Yeah.
24 THE WITNESS: You trying to tell me

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1 what I saw, and I already told you I didn't
2 see no line-up. And I'm ready to go.

3 MR. ART: No. No. No. Hold on.

4 Hold on.

5 (All parties speaking at once.)

6 THE WITNESS: But I already -- you
7 -- you sitting here trying to put words in my
8 mouth, and I already told you --

9 BY MR. LEINENWEBER:

10 Q. You can tell me I'm wrong.

11 A. I ain't never -- I ain't never been -- well,
12 you're wrong.

13 Q. That answers the question.

14 (All parties speaking at once.)

15 A. You stop trying to sit up here and asking me
16 the same question over and over again. I
17 already answered for you, man.

18 MR. ART: Mr. Melendez, let me tell
19 you something.

20 THE WITNESS: I'm ready to go, man.

21 MR. ART: It's a -- it's -- it's
22 not --

23 THE WITNESS: I'm ready to go, man.

24 MR. ART: Let me -- let me say

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1 something.

2 THE WITNESS: I answered what I
3 could for you and --

4 MR. LEINENWEBER: Let him speak.

5 MR. ART: Let me say -- let me --

6 THE WITNESS: -- and you keep asking
7 me --

8 MR. ART: Mr. Melendez, I feel you.

9 Let me say something on Mr. Leinenweber's
10 behalf, which is lawyers gotta do this stuff.

11 THE WITNESS: I understand.

12 MR. ART: And if your answer is
13 like, no, that's not true, then tell him.

14 THE WITNESS: But I'm saying he --
15 he already asked me that and I told him
16 already.

17 (All parties speaking at once.)

18 MR. ART: Mr. Leinenweber, please --
19 please continue.

20 MR. LEINENWEBER: Thirty seconds.

21 BY MR. LEINENWEBER:

22 Q. You saw his face and you denied seeing it at
23 the trial, that --

24 A. You said I saw his face. I already told you I

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1 never saw his face.

2 Q. And the reason you denied it was because you
3 didn't want any gang retaliation against you,
4 correct?

5 A. I don't know what you're thinking, but
6 whatever you're saying now, you're not --

7 Q. But that's what happened, right? You saw
8 it --

9 A. Nah, that's not what happened.

10 Q. -- and refused to testify?

11 A. That's what you saying that happened.

12 MR. LEINENWEBER: I have nothing
13 further.

14 MR. ART: Okay. I just have three
15 more questions for you.

16 REEXAMINATION

17 BY MR. ART:

18 Q. You were asked questions about how you knew
19 Mr. Guevara was a dirty police officer.

20 Do you remember those question?

21 A. Yeah, he asked me.

22 Q. In this investigation into Nuni's death, did
23 you think it was dirty that he said you'd
24 viewed a live line-up when you hadn't?

Transcript of Jose Melendez
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1 A. Yeah, it was dirty.

2 MR. KIVETZ: Object to form.

3 BY MR. ART:

4 Q. Did you think it was dirty that he said you'd
5 ID'd this car in Exhibit 5, in the parking
6 lot, when you actually told him it wasn't the
7 car?

8 A. Of course --

9 MR. KIVETZ: Object to form.

10 THE WITNESS: -- it's dirty because
11 I never identified it. I mean, like I told
12 him, this ain't the car, man.

13 MS. BARBER: And object to the
14 leading.

15 BY MR. ART:

16 Q. Do you think it was dirty when he held up a
17 photograph of Thomas Sierra and told you "we
18 think this is the guy who did it"?

19 MS. BARBER: Objection. Leading.

20 MR. KIVETZ: Objection. Form.

21 Leading.

22 THE WITNESS: Of course, it's dirty.
23 I mean, why would he -- why, if he -- if I
24 never told him it was him, why he be showing

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1 me a picture of somebody that I ain't never
2 identified. You know what I'm saying?

3 MR. ART: I have no further
4 questions. Thank you very much for your time
5 limit R.

6 MR. KIVETZ: Thank you very much.

7 MR. SWAMINATHAN: Thank you.

8 (End of proceedings: 10:59 a.m.)

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1 STATE OF ILLINOIS)

2 COOK, SS:)

3

4 I, JANE M. BORROWMAN, Registered
5 Professional Reporter and Notary Public in and
6 for the State of Illinois, do hereby certify
7 that on August 13, 2019, JOSE MELENDEZ, the
8 witness whose deposition is hereinbefore set
9 forth, was duly sworn by me and that such
10 deposition is a true record of the testimony
11 given by the witness.

12 I further certify that I am neither
13 related to or employed by any of the parties
14 in or counsel to this action, nor am I
15 financially interested in the action.

16 In witness whereof, I have hereunto
17 set my hand and seal this 22nd day of 2019.

18

19

Jane Borrowman

20

Notary Public

21

RPR No. 001420

22

23 My commission expires:

24 23 December 2019

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